

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TIMOTHY WHITE,)
)
Plaintiff,)
)
vs.) 3:11-CV-1817-B
)
REGIONAL ADJUSTMENT)
BUREAU, INC., d/b/a)
RAB, INC.,)
)
Defendant.)

MOTION FOR SANCTIONS - VOLUME 4
BEFORE THE HONORABLE JANE J. BOYLE
UNITED STATES DISTRICT JUDGE
NOVEMBER 6, 2013

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TRANSCRIPT OF PROCEEDINGS - VOLUME 4

XERXES EUGENE MARTIN, IV

Direct Examination By Ms. Malone	15
Cross-Examination by Mr. Jefferson	27
Cross-Examination by Mr. Meyers	40

ROBBIE MALONE

Direct Examination By Mr. Martin	112
Cross-Examination by Mr. Jefferson	156
Cross-Examination by Mr. Meyers	192

NOAH RADBIL

Redirect Examination by Mr. Suazo	235
Reporter's Certificate	308

EXHIBITS ADMITTED INTO EVIDENCE

EXHIBIT	DESCRIPTION	OFFERED/ADMITTED
RAB Exhibits 1 - 44		12
Radbil Exhibits 1 - 32 and 34		11
Radbil Exhibits 35, 36 and 37		13
Weisberg & Meyers Exhibits 1 - 33		9
Weisberg & Meyers Exhibit 32		14

SHAWNIE ARCHULETA, CSR/CRR
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1 (In open court at 10:00 a.m.)

2 THE COURT: Good morning. This is case
3 3:11-CV-1817, Timothy White v. Regional Adjustment
4 Bureau, d/b/a RAB. We are here this morning on the
5 fourth hearing on the defendant's motion for
6 sanctions under 18 U.S.C. Section 1927, that's
7 Document Number 20, with all of the pleadings
8 attached to that, and defendant Regional Adjustment
9 Bureau's motion and brief for sanctions pursuant to
10 Rule 37, and that's document 119. Those were filed
11 shortly after the trial, both of them, March the
12 26th of 2013.

13 All right. I'd like to begin, as I have,
14 by having the parties introduce themselves for the
15 record, and I'm going to start with counsel for the
16 plaintiffs.

17 MR. MEYERS: Good morning, Your Honor.
18 Marshall Meyers on behalf of myself and
19 Weisberg & Meyers.

20 THE COURT: Thank you.

21 MR. MEYERS: Your Honor, Dale Jefferson
22 and my partner Raul Suazo. We represent Noah Radbil
23 for purposes of the 1927 and Rule 37 hearing.

24 THE COURT: Thank you, Mr. Jefferson. And
25 Mr. Radbil is here, as well.

1 For the defense?

2 MS. MALONE: Robbie Malone and Xerxes
3 Martin on behalf of Regional Adjustment Bureau.

4 THE COURT: Thank you very much.

5 My recollection is, from looking at all of
6 the transcripts from the last few hearings, is that
7 we left off here with -- we finished with
8 Mr. Meyers.

9 MR. JEFFERSON: Yes, I believe we did
10 finish with Mr. Meyers.

11 THE COURT: Okay.

12 MR. MEYERS: You did, Your Honor.

13 THE COURT: And next up, then, is
14 Mr. Suazo is going to call Ms. Malone; is that
15 right?

16 MS. MALONE: Your Honor, we are still
17 presenting the end of our case, and I was going to
18 have Mr. Martin for a short time, and then I will
19 testify, and then we will be finished.

20 THE COURT: Thank you. That's what I
21 thought we were doing.

22 MR. JEFFERSON: And Your Honor, Ms. Malone
23 and I had a chance to visit the other day and then
24 visited with Mr. Meyers this morning to do our
25 dead-level best why each of us prospectively

1 representing our clients but being mindful of the
2 judicial resources and time. So Ms. Malone had made
3 a request that perhaps some of the issues relating
4 to her claim for attorney's fees could be done in
5 terms of briefing so that we don't have to slug
6 through on a line item by line item basis with
7 respect to her or Mr. Martin going through and
8 saying, okay, on this date you had this time entry,
9 how much time did you spend, and what's your hourly
10 rate and that kind of stuff.

11 If the Court is okay with that, we are not
12 going to object to doing some post-hearing
13 submission on whatever their fee issue was.

14 THE COURT: I appreciate that,
15 Mr. Jefferson, but honestly, I think I have probably
16 read my last brief in this case. There are
17 mountains of paper covering all of this. I would
18 just as soon have it covered in the hearing than
19 having it objected to and more paper back and forth
20 in this case. My hope and plan is that, unless
21 there is some absolute need, there will be no
22 further submissions in this case on these issues.
23 So I would like to go ahead. And you have it all
24 documented and with you today, right?

25 MS. MALONE: Yes, Your Honor.

1 THE COURT: That's the way I would to do
2 it, then.

3 MR. JEFFERSON: And the second thing that
4 we had discussed -- and again, that's why we're
5 bringing it up now, because you ultimately get to
6 decide. Mr. Suazo and I weren't at the first
7 hearing, but I understand that there was some
8 discussions at the first hearing about, you know,
9 the opportunity for counsel to do some form of a
10 close. And again, counsel and I kind of discussed
11 it beforehand, and we're hopeful -- because we
12 certainly want to get finished today, we are hopeful
13 that the Court will allow us to do that.

14 Because frankly, I think that will allow
15 us to short-circuit, if you will, some of the
16 testimony so that witnesses don't have to
17 necessarily have some sort of aha moment, saying,
18 when you put this exhibit with this exhibit, it
19 means this. I think that can best be done by
20 counsel making their arguments and summarizing. So
21 we wanted to clarify that, at the conclusion of the
22 testimony, which I believe will be concluded today,
23 that counsel for each side will have an opportunity
24 to make some brief remarks to the Court.

25 THE COURT: Absolutely.

1 MR. JEFFERSON: Thank you, Your Honor.

2 THE COURT: I do want to also make sure
3 that -- I believe at this point, as of the beginning
4 of the last hearing in October -- I admitted,
5 understanding there were objections, but also
6 understanding this is a court-reviewed issue and not
7 jury, the exhibits that each Mr. Radbil, the
8 plaintiff's counsel's firm, Weisberg & Meyers, as
9 well as RAB had to offer.

10 And I know there have been a couple of
11 perhaps extra ones that have been requested to be
12 supplemented in the record. So let's just go really
13 quickly over each exhibit, the numbered exhibits.
14 And I'm going to start with those plaintiff's
15 exhibits that the plaintiffs take the position --
16 and when I say that, I'm talking about the law firm,
17 because Mr. Radbil has his own. The exhibits, I've
18 got them all here organized, we have been through
19 them at length yesterday, but I want to make sure I
20 know what everybody agrees is in.

21 There were some -- was also an issue about
22 a redacted version of some of the documents that I
23 don't know that I got last time, we talked about it,
24 but we left with the idea that everything would be
25 taken care of. So Mr. Meyers, tell me what numbered

1 exhibits in your view are in for Weisberg & Meyers.

2 MR. MEYERS: It was my understanding at
3 the last hearing that the Court said that it was
4 admitting all of the exhibits.

5 THE COURT: Right, but I need the
6 numbers --

7 MR. MEYERS: Oh, I'm sorry.

8 THE COURT: -- in your view, what those
9 numbers are. I have that documented in the
10 transcript, but I'm trying to make sure that
11 everyone agrees so that there is no dispute on the
12 details.

13 MR. MEYERS: One -- Law Firm 1 through 33,
14 Your Honor. And there were two exhibits -- we ended
15 the last hearing at 31, so then there were two
16 exhibits that I sought to supplement with, and I do
17 have copies of those for the Court if it wants to.

18 THE COURT: We will talk about that in
19 just a moment. But right now, it's your view that
20 1 -- in complete sequence with nothing left out --
21 through 33 is in evidence.

22 MR. MEYERS: With the caveat that there is
23 an exhibit that needs redactions.

24 THE COURT: Which exhibit is that?

25 MR. MEYERS: That is -- it's either

1 Exhibit 22 -- I think it's Exhibit 22. Yes, it's
2 Exhibit 22, Your Honor.

3 THE COURT: Okay. All right. And then
4 for Mr. Radbil, the exhibits that have been admitted
5 for Mr. Radbil.

6 MR. SUAZO: I think we have Exhibits 1
7 through 37. We initially had 1 through 34, and then
8 there was the latest leave to supplement that went
9 35, 36, and 37.

10 THE COURT: Right now what I am talking
11 about is what has actually been admitted in a
12 hearing by the Court. And we're going to talk about
13 those motions for leave to supplement in just a
14 moment. But let's just talk about what's been -- so
15 the record is very clear if there's an appeal,
16 what's been admitted. So for Mr. Radbil you're
17 saying 1 through 34.

18 MR. SUAZO: Yes, Your Honor.

19 MS. MALONE: Your Honor, there is one
20 caveat. On Exhibit Number 33, the one that was
21 filed with the Court for Mr. Radbil, it says that
22 there is no document there. It just says that it
23 may be offered, but there is no actual document
24 offered into evidence.

25 MR. SUAZO: That's correct, Your Honor.

1 So it would be 1 through 32 and 34. The way things
2 are going, I don't see a need to offer 33.

3 THE COURT: So one through 34 with the
4 exception of 33, correct?

5 MR. SUAZO: Yes, Your Honor.

6 THE COURT: And then you have some that
7 you -- a couple or one or two that you want to
8 supplement, and we will talk about that in a moment.

9 MR. SUAZO: Your Honor, one other thing,
10 as well.

11 THE COURT: Yes.

12 MR. SUAZO: There were a number of
13 exhibits attached to the various motions and the
14 responses. And not that those were formally offered
15 up by either side at the prior hearing, but I think
16 they are at least before the Court in form of paper.

17 THE COURT: Just to be clear, those are
18 not exhibits. And I think the appellate record
19 would be really very confusing if we were to try to
20 pick through and see what attachments to motions
21 filed are exhibits. So they are not exhibits. They
22 are part of the record as having been filed and
23 having been referred to in the motions, so I feel
24 very comfortable that I can refer to those in the
25 order that I prepare. But they are not exhibits.

1 They are just attachments to motions that have been
2 filed. Okay.

3 And for RAB?

4 MS. MALONE: 1 through 42, Your Honor --

5 THE COURT: 1 through 42.

6 MS. MALONE: -- have already been
7 admitted.

8 THE COURT: Okay. All right. With that,
9 then, let's talk for a minute about what has been
10 sought to be supplemented. I have RAB's request to
11 supplement, it's unopposed, and I just want to be
12 clear that those are which numbered exhibits?

13 MS. MALONE: 43 and 44, Your Honor.

14 THE COURT: Both sides agree to those?

15 MR. MEYERS: Yes, Your Honor.

16 THE COURT: Defense Exhibits 43 and 44 are
17 now admitted.

18 And then so far as Mr. Radbil, the
19 supplemental exhibits -- and remind me the numbers
20 of those.

21 MR. SUAZO: 35, 36 and 37.

22 THE COURT: Was there any objection to
23 that?

24 MS. MALONE: We didn't make a formal
25 objection, Your Honor. So for the purposes of this

1 hearing, we will agree to the admission.

2 THE COURT: I'm sorry, what?

3 MS. MALONE: We did not make a formal
4 objection when we had a discussion with them, but
5 for purposes of this hearing, I feel comfortable
6 agreeing to their admission.

7 THE COURT: And that's?

8 MR. SUAZO: 35, 36 and 37.

9 THE COURT: Okay. When we finish today,
10 we will make sure all of what you have just
11 described here is on the record and redacted and in
12 proper form with our court reporter so that the
13 record is -- I've got my copies, and if we need to
14 use some of those, that's fine, but we need to make
15 sure we have a complete set of exhibits that you
16 have just described.

17 And then for plaintiff's supplemental
18 exhibits, Mr. Meyers?

19 MR. MEYERS: That would be Number 32 and
20 33, Your Honor.

21 THE COURT: Do both sides, everyone agree
22 to that?

23 MS. MALONE: Yes, Your Honor.

24 MR. SUAZO: You yes, Your Honor.

25 THE COURT: So the Law Firm's Exhibits 32

1 and 33 are admitted. So that should make the record
2 clear right now as to what's in evidence. Anyone
3 have any questions?

4 MR. MEYERS: I have copies and a revised
5 exhibit list if the Court needs it.

6 THE COURT: Well, I have everyone's
7 proposed supplemental exhibits and exhibit lists.
8 We can take care of that at the end. Just make sure
9 that all of these additional exhibits are part of
10 the exhibits that you leave with the Court as part
11 of the record. Okay?

12 All right. Where are we?

13 MS. MALONE: I was about to call
14 Mr. Martin to the stand, if the Court is ready.

15 MR. JEFFERSON: Judge, my apologies. This
16 morning I got very ill. I'm not -- we're going to
17 go forward with the hearing and everything, but if I
18 leave the courtroom quickly, I want you to know I am
19 not trying to offend anybody, I just may need to
20 take care of some things.

21 THE COURT: Are we talking something like
22 a heart or something like that?

23 MR. JEFFERSON: No, no. I just started
24 throwing up a lot. I'm blaming Sonny Bryan's
25 Steakhouse on the West End. But anyway, if at some

1 point in time I'm looking down, I just didn't want
2 the Court to think I was disrespectful or getting up
3 to make a phone call or something like that.

4 THE COURT: Thank you for letting me know.
5 I'm sorry you're not feeling better.

6 Okay. Mr. Martin.

7 **XERXES EUGENE MARTIN, IV,**
8 **having been first duly sworn, testified as follows:**

9 THE WITNESS: Yes, I do.

10 THE COURT: Have a seat, please.

11 **DIRECT EXAMINATION**

12 Q. (By Ms. Malone) State your name for the record
13 please, sir.

14 A. Eugene Xerxes Martin, IV.

15 Q. Will you tell the Court a little bit about your
16 educational background?

17 A. I went to Baylor University undergrad, and
18 after that I went to South Texas College of Law. I
19 graduated there in May of 2011. I took the bar
20 shortly after that and became a licensed Texas
21 attorney in November of 2011.

22 Q. And could you tell the Court a little bit about
23 your work experience, starting with your clerking
24 experience.

25 A. I started as a law clerk for Robbie Malone, PLC

1 after I had taken the bar.

2 THE COURT: Slow down just a little bit.

3 A. And in my time there, I attended hearings and
4 helped draft motions.

5 After I became an attorney, I attended
6 hearings, I practiced in hearings, continued the
7 motion practice, and I've also participated in a
8 handful of trials.

9 Q. And Mr. Martin, prior to joining my firm as a
10 clerk, did you do some internships while in law
11 school?

12 A. I interned twice for the Dallas District
13 Attorney's office. I also interned for the Fifth
14 District Court of Appeals here in Dallas, and that's
15 the extent of my internships.

16 Q. And were you assigned to a particular judge?

17 A. I was assigned to Justice Jim Moseley on the
18 Fifth District.

19 Q. While you were at the District Attorney's
20 Office as an intern, did you watch and observe
21 trials?

22 A. Yes, I did.

23 Q. Did you participate in preparation for those
24 trials?

25 A. Yes, I did.

1 Q. During the -- were you working on the White v.
2 Regional Adjustment Bureau case?

3 A. Yes, I did.

4 Q. What was your role with that case?

5 A. A lot of the role in it was some of the review
6 of discovery. I attended depositions. I helped
7 prepare for depositions. I did an extensive amount
8 of the briefing and pleadings in this case. I did a
9 good amount of the trial preparation. I was in here
10 for parts of the trial. And then I also did a lot
11 of postjudgment pleading drafting.

12 Q. And you have attended the entire sanctions
13 hearings process, correct?

14 A. I have also attended all of the sanctions
15 hearings.

16 Q. Did you make notes of your time as you went
17 through these various processes?

18 A. Yes, I did.

19 Q. And are those reflected in Exhibit 41, which
20 would be most of our attorney's fees invoices; is
21 that correct?

22 A. Yes.

23 Q. Did you review those prior to them being
24 submitted to the insurance company for payment?

25 A. Yes, I did.

1 Q. Now, Mr. Meyers -- I knew I was going to say
2 that. I apologize to you.

3 Mr. Martin, were you present in the hearing --
4 or do you recall in the last hearing where
5 Mr. Meyers testified at page 134, we are not
6 engaging new Texas state clients?

7 A. Yes, I was.

8 Q. Were you also present when he testified that he
9 would be sure that the cases filed in Texas would be
10 under his name directly as opposed to his firm name
11 to be sure that none of this would ever happen
12 again?

13 A. Yes, I was present for that.

14 Q. Did you have occasion to do any research to
15 find out if there were cases that were filed by that
16 firm subsequent to the October 9th hearing?

17 A. Yes, I did.

18 Q. What did you find?

19 A. On November 1st, I performed a search on PACER
20 for the four districts -- in the four United States
21 District Courts in Texas. And when I searched, I
22 searched Mr. Meyers' name, as well as an associate
23 of Weisberg & Meyers' name, Joe Panvini, and the
24 results of the search brought up a case filed in the
25 Southern District of Texas on October 24th, 2013.

1 Q. What was the style and name of that case, sir?

2 A. The name of the case is Juan Lee v. Joanna
3 Palacios Montealvo, doing business as Toyz-R-Us Auto
4 Sales; Toyz spelled with a Z.

5 Q. Did you look to see who was listed as attorney
6 of record for that case?

7 A. Juan Lee is represented by Joseph Panvini of
8 Weisberg & Meyers, LLC.

9 Q. Is Mr. Meyers listed anywhere as counsel of
10 record in that case?

11 A. No, he is not listed in the represented by or
12 the signature for the plaintiff's counsel.

13 Q. Just for context, this was approximately two
14 weeks after our hearing?

15 A. Yes.

16 Q. Did you also have occasion to do some
17 additional search regarding Weisberg & Meyers
18 advertising for Texas clients?

19 A. Yes. I also performed a general search on
20 Weisberg & Meyers. In the past, I had seen that
21 they had a Twitter account, and so I ended up
22 reviewing that.

23 Q. Did you find any reference to Texas consumers
24 in the Twitter accounts?

25 A. On September 24th, they had made a posting on

1 their Twitter account that stated, Consumers in
2 Texas deserve Texas size representation and
3 protection.

4 Q. So two weeks before the hearing,
5 Weisberg & Meyers was soliciting or advertising for
6 Texas consumers.

7 A. Yes.

8 Q. In the process of looking for that consumer
9 account, did you find anything related to this suit,
10 sir?

11 A. Yes.

12 Q. Can you tell the Court what you found?

13 A. In the past, I had seen that
14 Weisberg & Meyers -- Weisberg & Meyers sort of has
15 another Twitter account that is under the name
16 Consumer Law QA.

17 Q. Let me stop you there. Whose photograph
18 appears next to that Twitter account?

19 A. Mr. Meyers'.

20 Q. Tell us what you found.

21 A. In reviewing some of the postings under that
22 account, on July 25th there is a tweet or post of
23 Mr. White v. Regional Adjustment Bureau,
24 Incorporated, hash tag TCPA, hash tag consumer
25 rights, hash tag violations, and it includes a link.

1 Q. Okay. And so we are clear, this is
2 July 25th of this year?

3 A. Yes.

4 Q. And that would be approximately five months
5 after the trial for the White case.

6 A. Yes.

7 Q. When you clicked on to the link, what did you
8 find?

9 A. The link is to an article posted on Consumer
10 Law QA, a website. It's an article entitled:
11 Mr. White v. Regional Adjustment Bureau,
12 Incorporated, Telephone Consumer Protection Act,
13 TCPA, violation December 3rd, 2012.

14 Q. And does the article describe what kinds of
15 recovery Mr -- or Dr. White might make?

16 A. The article states that Dr. White is entitled
17 to statutory damages of up to \$1,000 in actual
18 damages as determined by a jury. And it also states
19 that the Texas Debt Collection Act entitles
20 Dr. White to actual damages. Both statutes entitle
21 Dr. White to recover the full measure of his
22 reasonable attorney's fees and costs as determined
23 by the federal district court judge. And then it
24 also states that he is entitled to a minimum of \$500
25 per call under the TCPA and up to \$1,500 per call.

1 Q. Did it give an approximate call count?

2 A. It states that RAB placed more than 70 calls to
3 Dr. White.

4 Q. Does it give a description of other cases in
5 which Weisberg & Meyers has recovered funds under
6 the TCPA?

7 A. It states that Weisberg & Meyers has recently
8 recovered \$20,000 and \$113,000 for its clients.

9 Q. At the bottom of the article, does it indicate
10 what day it was last modified?

11 A. It states it was last modified May 9, 2013.

12 Q. And anywhere in this article does it indicate
13 that the trial had already occurred?

14 A. No, it doesn't.

15 Q. Does it indicate that Dr. White had, in fact,
16 already lost the case?

17 A. No, it doesn't.

18 Q. Is there a third page that is attached to the
19 article?

20 A. Yes. Below the article, there's an option for
21 a free case evaluation, no obligation lawyer review,
22 and it has boxes to input first name, last name,
23 e-mail, phone number, state, and interested in.

24 Q. So it's a client solicitation?

25 A. Yes.

1 Q. Using the White case in May and July of 2013?

2 A. Correct.

3 Q. Mr. Meyers -- Mr. Meyers had referenced -- I'm
4 sorry. I apologize. It was Mr. Radbil's exhibits
5 indicated that there's an exchange between the two
6 of you regarding a confidentiality agreement. Do
7 you remember that, sir?

8 A. Yes, I do.

9 Q. And just for the Court's reference, the
10 exhibits that Mr. Radbil discusses that about are
11 Exhibits 15 through 16, 19, 20, 21, 23, 24 and 26.
12 And I want you to basically tell the Court what it
13 is that was going on with the confidentiality
14 agreement.

15 A. This was shortly before our client's deposition
16 was going to be taken by Mr. Radbil. I believe two
17 days before the deposition we had conferred
18 regarding the topic list for the deposition. At the
19 end of our conference on that, I had stated to him,
20 we haven't received back the confidentiality
21 agreement that we had sent to them for us to produce
22 withheld documents under privilege.

23 He responded to me something along the lines
24 of, I don't know the confidentiality agreement
25 you're referring to, and, what are these documents

1 you are withholding.

2 I stated, it probably has something to do with
3 the policies and procedures. And so then it went on
4 from there.

5 And the next day, he's stating he's never
6 been proposed this confidentiality agreement for the
7 documents, and -- I'm trying to recall exactly. And
8 so then there was a lot of e-mails back and forth
9 regarding entering a confidentiality agreement that
10 day, the day before the deposition, for us to
11 produce the documents.

12 And so we were going back and forth. He was
13 wanting to enter one that they were proposing, and
14 we were wanting him to enter the one that we had
15 sent to him about two weeks prior, which he claimed
16 he hadn't received.

17 And in the end, we started discussing that he
18 would be willing to enter the confidentiality
19 agreement that we had entered in I believe the Lee
20 case that we had recently had with plaintiff's
21 counsel, Weisberg & Meyers, as well as I believe the
22 Whatley case that we had had with Weisberg & Meyers.

23 And so once we reached that agreement, I went
24 to our paralegal and requested the confidentiality
25 agreement that we had entered in those cases. She

1 gave me a copy of the proposed one from those cases,
2 and I reviewed it, submitted it to Mr. Radbil
3 stating it was the same one from those cases.

4 Later, I received an e-mail from him claiming I
5 had a misrepresentation, that that was not the
6 confidentiality agreement that was entered in those
7 cases.

8 I discussed it with the paralegal. After I
9 mentioned that to her, she recalled that
10 Weisberg & Meyers had one change that they had made
11 to the confidentiality agreement, which was the one
12 subsequently entered.

13 And so then right after I had received the
14 e-mail from him stating I made the
15 misrepresentation, I apologized to him. I stated
16 that that's what happened, our paralegal handed me
17 that one. I believe it was the same one from that
18 case. I believe it was the same one proposed but
19 not the one entered. So I apologized for that, and
20 we resolved it from there.

21 Q. Would you look at Exhibit 43 in the White
22 notebook, sir. It's ours.

23 THE COURT: So it would be RAB Exhibit --

24 MS. MALONE: 43, Your Honor.

25 THE COURT: Okay.

1 A. Okay.

2 Q. (By Ms. Malone) And Mr. Martin, at the bottom
3 there are some Bates number, if you would just turn
4 to Bates number 18, 0018.

5 A. Okay.

6 Q. And could you tell the Court what the e-mail is
7 at the bottom of the page?

8 A. This is the e-mail I sent in response to when
9 he stated I made the misrepresentation.

10 Q. Did you apologize for any misrepresentation
11 that you had given to them?

12 A. Yes, I apologized for that misrepresentation.

13 Q. And you provided him with the one that he
14 requested?

15 A. Yes.

16 Q. So you -- how long of a period of time before
17 you corrected the mistake you had made?

18 A. It was within the hour, when I had time to
19 research and review it and speak to the paralegal.

20 Q. Did you intentionally misrepresent anything to
21 Mr. Radbil?

22 A. No, I did not.

23 Q. Did you immediately correct it when he brought
24 it to your attention?

25 A. Yes.

1 Q. Did he sign the agreement that he requested to
2 be signed?

3 A. Yes.

4 Q. Did you also sign that agreement?

5 A. Yes.

6 MS. MALONE: No further questions, Your
7 Honor.

8 THE COURT: All right. Mr. Jefferson.

9 **CROSS-EXAMINATION**

10 Q. (By Mr. Meyers) Good morning, Mr. Martin. How
11 are you?

12 A. Doing all right, how about you?

13 Q. Good, thank you, under the circumstances.

14 Remind me, again, sir, how many years have you
15 been licensed?

16 A. I've been licensed since 2011, so it's pretty
17 much two years to this day.

18 Q. Have you ever first chaired a jury trial, sir?

19 A. Could you repeat that?

20 Q. Have you ever first chaired a jury trial?

21 A. No, I have not.

22 Q. Have you ever first chaired any trial before?

23 A. No, I have not.

24 Q. Would you say with respect to the amount of
25 time that you spent at the actual trial of the White

1 case versus the amount of time that you've spent at
2 the sanctions hearing, what have you spent more time
3 at in this courtroom, the trial or the sanctions
4 hearing?

5 A. Sanctions hearing.

6 Q. Now, you were asked a series of questions by
7 Ms. Malone concerning Mr. Meyers' testimony, and you
8 recalled some PACER research that you did regarding
9 the Juan Lee v. Palacios, Toyz case.

10 Do you recall that testimony?

11 A. Yes.

12 Q. And would you agree with me, sir, that when you
13 did that search you did not find the name of Noah
14 Radbil? True?

15 A. True.

16 Q. And of course you know that Mr. Radbil is no
17 longer affiliated with Weisberg & Meyers and has not
18 been so for some period of time, correct?

19 A. There's some question with the Of Counsel, but,
20 yes, it appears that he's no longer affiliated.

21 Q. And with respect to the Of Counsel, since you
22 were asked questions about what you recalled about
23 Mr. Meyers' testimony, you also recall Mr. Meyers'
24 testimony, do you not, where he testified that
25 Mr. Radbil did not have access to the firm's

1 website. Do you recall that?

2 A. Yes.

3 Q. And that Mr. Radbil did not have the ability to
4 make changes to anything involving the firm's
5 computer advertising systems?

6 A. That's correct.

7 Q. Okay. And so just to be clear on that, with
8 respect to the stuff that you talked about regarding
9 the September 24 Twitter information that you
10 indicated you saw a photograph of Mr. Meyers, you
11 would agree that there was no such photograph of
12 Mr. Radbil, Noah Radbil, true?

13 A. Yes.

14 Q. And likewise, with respect to the information
15 that you looked at with respect to Juan Lee and all
16 of the other searches that you did, you didn't find
17 any filings by Noah Radbil as being someone filing a
18 lawsuit in conjunction with Weisberg & Meyers,
19 correct?

20 A. Correct.

21 Q. Now let's talk about the last issue that you
22 talked about with respect to Ms. Malone concerning
23 the protective order, just so we can kind of wrap a
24 bow on this. As I appreciate it, you prepared a
25 proposed protective order, and you wrote an e-mail

1 to Noah Radbil saying it was the same one that was
2 entered in another case, and that turned out to be a
3 mistake, right?

4 A. Yes.

5 Q. Okay. And mistakes happen, right?

6 A. Correct.

7 Q. Sure. Do you feel like as you get older and
8 you get more experience you will make less mistakes?

9 A. Hope so.

10 Q. And by the way, when you -- when you did that,
11 your testimony was that you didn't do it in bad
12 faith and that you didn't do it intentionally, you
13 weren't trying to pull one over, you just made a
14 mistake, and when it was called to your attention,
15 you rectified the mistake, correct?

16 A. Correct.

17 Q. And so to that degree, you've asked Mr. Radbil
18 to give you the benefit of the doubt in that regard,
19 correct?

20 A. Sure.

21 Q. Okay. And do you think there's anything wrong
22 with that in terms of a lawyer asking another lawyer
23 to give him the benefit of the doubt?

24 A. Not particularly.

25 Q. Okay. And I guess my question here is that, at

1 the end of the day when you're asked a question
2 like, did you do it in bad faith, or, did you do it
3 intentionally, at the end of the day when we are
4 dealing with issues such as motive and intent,
5 that's something that's inherently internal as to
6 the individual person, true?

7 A. Is your question kind of determining bad faith,
8 is that only one that the person that's accused of
9 can answer?

10 Q. Well, I guess -- let me put it this way:
11 There -- if somebody gets up there and they say with
12 respect to, say, this protective order, I didn't do
13 it in bad faith, I didn't do it intentionally,
14 that's an issue where at the end of the day you're
15 asking, as you did in this case, Mr. Radbil to take
16 your word at it, correct?

17 A. Correct.

18 Q. In other words, there's not -- there's not a
19 document that we can look at that would establish
20 some sort of truth meter or something that existed
21 at that point in time when you wrote the e-mail.
22 It's something that, as an officer of the court, we
23 have to take your word on, that you simply made a
24 mistake and that you weren't trying to put one over
25 on Mr. Radbil, right?

1 A. That's correct.

2 Q. Okay. And so my question is: As to you -- and
3 I'm limiting my questions just to you. And I
4 understand that many times it was Ms. Malone who was
5 the person who was in charge of this case. But as
6 it related to your personal dealings with
7 Mr. Radbil -- and just so I'm clear on the
8 parameters, I want to make sure that my question is
9 just you, Mr. Xerxes Martin and Mr. Noah Radbil. So
10 I'm not asking about anyone else at the Malone law
11 firm or anybody else at the Weisberg & Meyers law
12 firm. So my question to you as you sit here today
13 is: Are you accusing Mr. Radbil of intentionally
14 trying to put something over on you personally?

15 THE COURT: At what point in time?

16 MR. JEFFERSON: Thank you, Your Honor.

17 Q. (By Mr. Jefferson) Limiting it to your
18 dealings solely in the White case and no other case.

19 A. I don't think like anything can actually be put
20 towards me in this situation. This more so has to
21 do with the case, our client, and not particularly
22 any dealing with me.

23 Q. Okay. And that's why I made sure, because I'm
24 not asking you to speculate as to your client or
25 your paralegals or your boss or anybody else, and

1 I'm not asking about you anybody else, either. I'm
2 asking you just about Noah and just in the White
3 case. And is the answer to my question, no, there
4 is nothing that I am accusing him of of trying to
5 pull over on me, Xerxes Martin?

6 A. With the phrasing of pull over, I don't think
7 that really fits.

8 THE COURT: It's a little confusing,
9 Mr. Jefferson.

10 MR. JEFFERSON: Okay. I will re-ask it.

11 THE COURT: Well, let me just say, there
12 is a wealth of testimony about things that
13 Mr. Radbil did during the course of this case that
14 affected their firm. And so to parse it up I think
15 is a little confusing under the circumstances. So
16 maybe you can make the question clearer.

17 MR. JEFFERSON: Okay. All right. Let me
18 break it down.

19 Q. (By Mr. Jefferson) You understand that you are
20 a distinct individual and human being separate and
21 apart from Ms. Malone, any employee of the Malone
22 law firm, RAB and CHUBB Insurance Company, you
23 understand that, don't you?

24 A. Yes.

25 Q. And you understand that Noah Radbil is a

1 separate human being, separate and apart from the
2 Weisberg & Meyers law firm and any of his clients,
3 true?

4 A. Yes.

5 Q. Okay. And so what I'm trying to figure out now
6 is that, in your personal dealings with Mr. Noah
7 Radbil -- and again, now that we have limited the
8 parameters to just you and Noah Radbil and no other
9 person on the planet and solely relating to the
10 White case, my question to you is: Are there any
11 mistakes that Noah Radbil made where you're saying,
12 no, that wasn't a mistake, that was something that
13 he did intentionally and in bad faith?

14 THE COURT: I just don't understand the
15 relevance of that. What difference does that make?

16 MR. JEFFERSON: Well, because that's --
17 that's one of the -- one of the issues that I think
18 that the Court would look at in its ability to
19 inherently sanction someone, which is whether or not
20 there is a belief by someone that they acted in bad
21 faith.

22 THE COURT: But you are putting it in a
23 context that it doesn't belong. The intent on
24 Mr. Radbil's part was as to the case and I suppose
25 as to the firm or as what he did to the case

1 affected the firm. But to put it in that -- I just
2 think that's irrelevant, and I think it's confusing,
3 and I don't think it answers -- goes to the issues
4 that have to be determined by the Court. So let's
5 ask another question. All right?

6 MR. JEFFERSON: Well, then, let me see if
7 I can go about it in a different way.

8 Q. (By Mr. Jefferson) Do you contend that any of
9 the complaints being lodged against Mr. Radbil, ones
10 that you have personal knowledge of -- and Judge,
11 that's kind of the reason I'm making the
12 limitations, because I don't want him to speculate
13 about Ms. Malone or anybody else. I want to know
14 just this gentleman's personal knowledge. Okay? So
15 maybe that will help you. Okay?

16 So with that caveat, that I am seeking just
17 your personal knowledge as opposed to extrapolations
18 or what other people may say, feel, or testify to,
19 are you of the opinion that Mr. Radbil did something
20 to you in his dealings with you that was in bad
21 faith of your personal knowledge?

22 A. I'm not necessarily in the position to make
23 that determination. However, one thing that does
24 stick out is conferences regarding motions. Two in
25 particular: Motion to compel. Every case we have

1 dealt with Mr. Radbil, as well as Weisberg & Meyers,
2 we are forced to file a motion to compel to get
3 their attorney fee agreements and their billing
4 invoices, as well as information regarding actual
5 damages.

6 Q. Okay.

7 A. We have had -- we have had numerous cases with
8 that, that actually happened in this case. Every
9 time they refused to produced them, we are forced to
10 draft a motion to compel, we were forced to obtain
11 judicial intervention to finally get those
12 documents.

13 Every single time we have had to file a motion
14 to compel, we've had it ruled on, and it's been
15 ruled on in our favor. And even continuing with the
16 last case we dealt with them, which was the Payne v.
17 Progressive Financial Services in the Northern
18 District in Fort Worth in front of Judge Means, we
19 had to do the exact same thing.

20 MR. JEFFERSON: I need to object as
21 nonresponsive since my question was clearly limited
22 to the White case and clearly limited to Mr. Radbil,
23 and you gave an answer regarding both other members
24 of Weisberg & Meyers and other cases.

25 THE COURT: Overrule the objection.

1 MR. JEFFERSON: So can you answer the
2 question that I asked?

3 THE COURT: I think he's answered the
4 question, Mr. Jefferson. If you want him -- if you
5 want me to consider whatever he said and take out
6 consideration of what he said about the other case
7 in Fort Worth, I will do so.

8 MR. JEFFERSON: Thank you. That's all I
9 need.

10 THE COURT: I think he has answered the
11 question.

12 A. I do have another conference regarding the
13 White case which had to do with us filing a motion
14 to leave to file our bill of costs in this case.
15 And that conference took well more time of mine and
16 Mr. Radbil's than it should have. Instead of
17 getting a simple answer one day, I had to wait for
18 the next day for him to review our motion and
19 respond. It was a motion for us asking for almost
20 \$10,000 of costs from his client, which I'm pretty
21 sure any attorney in his position would oppose
22 outright.

23 Q. But you understand that Mr. Radbil is not a
24 principal in the firm, correct?

25 A. Yes.

1 Q. And by the way, ultimately all of the costs
2 were paid, true?

3 A. True.

4 Q. Okay. Now, would you agree with me that any
5 conduct by Weisberg & Meyers or Noah Radbil in any
6 other case did not have the effect of multiplying
7 the proceedings in this case, the White case?

8 A. I think that's correct.

9 MR. JEFFERSON: Thank you, sir.

10 THE COURT: Mr. Meyers.

11 MR. MEYERS: Thank you.

12 Your Honor, will we have the opportunity
13 to call witnesses in our case in chief?

14 THE COURT: I'm not sure why you're asking
15 me this. You've already testified.

16 MR. MEYERS: Okay. So this is
17 Mr. Martin's one time on the stand?

18 THE COURT: I'm confused, because this is
19 the fourth time we've been together on this.
20 Ms. Malone has put her witnesses on.

21 Ms. Malone, do you have any thoughts on
22 this?

23 MS. MALONE: Well, Your Honor, I
24 understood that we were all going to get the
25 evidence as the witness was on the stand as typical

1 so as to save the Court's time. I think it's a
2 waste of the Court's time for us to re-call
3 witnesses to go back over the same things.

4 THE COURT: I agree. So finish up with
5 each witness. And my understanding, Mr. Jefferson,
6 it's very clear from our last hearing what was left
7 in this case to do. Has that changed?

8 MR. JEFFERSON: No, it's not, Your Honor.
9 I agree with Ms. Malone, with the one caveat is that
10 we said last time that we were going to re-call Noah
11 because we were told that when he first testified he
12 was not represented by counsel.

13 THE COURT: That's fine. I was just
14 trying to figure out where this was coming from.
15 Mr. Meyers, what were you planning on doing besides
16 calling yourself, which you have already done? What
17 other witnesses did you have?

18 MR. MEYERS: Just asking, Your Honor, but
19 you have answered.

20 THE COURT: No, no, I don't know what you
21 are asking me, though. Are you asking me -- do you
22 have a slade of witnesses that we haven't heard
23 about yet? I don't think that's what you're asking
24 me. I hope not.

25 MR. MEYERS: No.

1 THE COURT: I just misunderstood what you
2 were asking me. If you are going to call him, go
3 ahead and ask the questions now instead of
4 re-calling him. Is that it?

5 MR. MEYERS: Yes.

6 THE COURT: Apologize for the
7 misunderstanding.

8 MR. MEYERS: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 Q. (By Mr. Meyers) Mr. Martin, you just testified
11 about some representations that I made at the last
12 hearing. You've reviewed the transcript from the
13 last hearing?

14 A. Yes.

15 Q. Okay. Do you recall when I was explaining the
16 sets of Texas cases? I explained there were Texas
17 federal cases, Texas state cases, and those were all
18 filed, and then unfiled cases. Do you recall that?

19 THE COURT: Maybe you can refer us to a
20 line and page on the transcript.

21 MR. MEYERS: That's at about page 155, and
22 it explains -- and it's pretty much going through --
23 or starting maybe at 154, line 18.

24 THE COURT: Okay. You don't have to read
25 it, just go ahead and ask your question. And if he

1 needs to look at the transcript, if you will show it
2 to him.

3 Q. (By Mr. Meyers) Do you recall me explaining
4 there are several different blocks of cases?

5 A. Yes.

6 Q. And I explained that there were Texas federal
7 cases filed, Texas state cases filed and unfiled
8 cases. Do you recall that?

9 A. Yes.

10 Q. Okay. So when you state that I said that we
11 were not engaging any new Texas state cases, do you
12 understand from the way I described the block of
13 cases what I meant at that time?

14 A. I guess there can be a difference between Texas
15 state cases and Texas federal cases. It could have
16 also been interpreted as the State of Texas cases.

17 Q. And that's fair. You said State of Texas, but
18 you at least understood where my distinction was,
19 given that I broke it up into three different
20 classes of cases. Is that fair?

21 A. There could be a difference.

22 THE COURT: So are you saying, Mr. Meyers,
23 that what you said in here was that your firm wasn't
24 filing any more Texas state cases?

25 MR. MEYERS: Yes, that my firm at that

1 time was not engaging any clients under Texas only,
2 Texas state law claims only, or filing any Texas
3 state lawsuits.

4 THE COURT: Where is that specific
5 statement so I can see it?

6 MR. MEYERS: 154 and 155, Your Honor.

7 THE COURT: Give me the lines, please.

8 MR. MEYERS: Yes, Your Honor.

9 MS. MALONE: Your Honor, if I could, while
10 you're looking, the line that Mr. Meyers was
11 responding to from Mr. Martin's testimony is page
12 134, lines 4 and 5, as well.

13 THE COURT: Okay. I just want to make
14 sure I'm clear on some of these points because
15 there's so much information. Give me just a minute.

16 I think on 134, the question that's a
17 response by you Mr. Meyers was: We are not engaging
18 any new Texas state clients.

19 And then I said: Well, Texas state
20 clients or clients anywhere? Don't you think it
21 would be considered a deceptive trade practice or
22 false advertising to have him -- talking about
23 Mr. Radbil -- as promoted on your firm website
24 without disclaiming and notifying people what's
25 happened to him?

1 okay. And why don't you show me where now
2 in the transcript that you were referring.

3 MR. MEYERS: Yes. That's an accurate
4 description when I say Texas state that Ms. Malone
5 pointed out. But starting at page 154, Your Honor,
6 line 18, I explain that I'm referring to several
7 different blocks of cases, and then I explain the
8 blocks of cases on page 155, Your Honor.

9 MS. MALONE: Your Honor, just as optional
10 completeness, I would ask the Court to look at the
11 question that starts with the answer, and it's
12 referring to motions to substitute.

13 THE COURT: What line is that?

14 MS. MALONE: It begins on line 12, Your
15 Honor, page 154.

16 THE COURT: You say, line 12:

17 Question: And I apologize, but I want, if
18 you will, to put a little meat on that bone. When
19 you are talking about the motion to substitute
20 counsel, are you referring to -- asking me,
21 Mr. Meyers asking me -- to all of the cases in which
22 Noah Radbil is listed as an attorney of record with
23 Weisberg & Meyers?

24 Answer: I am referring to several -- I've
25 got that confused.

1 You say: I'm referring to several
2 different blocks of cases. One would be cases filed
3 in federal court where Mr. Radbil is -- I'm not sure
4 who is doing the answering and who is doing the
5 questioning here.

6 Let's go back to find out what the point
7 is that you are making here, Mr. Meyers. What's the
8 point that you think was made that's incorrect, and
9 where is the clarification?

10 MR. MEYERS: The point that I was making,
11 Your Honor, is when I said at that time that the
12 firm was not engaging any new Texas state clients, I
13 meant that we were not at that time taking any cases
14 with Texas state law claims only.

15 And if you see on page 155 at line 2, 2
16 through 5: The next set of cases, Mr. Jefferson,
17 is -- or are cases filed in Texas State Court where
18 the firm does not employ any Texas attorneys any
19 longer.

20 And then at line 21, on the same page,
21 Your Honor: And since he departed, there is no new
22 or are no new Texas state clients being engaged by
23 the firm.

24 So what I meant by that, Your Honor, as
25 the way I break up the several different blocks of

1 cases is that, in the absence having another lawyer
2 licensed in Texas State Court, my firm was not
3 taking Texas State Court cases.

4 THE COURT: And I think part of this was
5 in the context of the earlier line of questioning
6 about that Mr. Radbil was promoted as Of Counsel on
7 this website that you have during the period of time
8 that all of this was going on. And back in the
9 earlier part of the transcript, I'm saying, any
10 clients in Texas, clients anywhere. Don't you think
11 it would be a deceptive trade practice to have him
12 promoted on your firm website without disclaiming or
13 notifying people what happened to him.

14 So I think it's almost that we are talking
15 about apples and oranges here with regard to that.
16 I've got your point as far as what you say about
17 Texas state cases. Let's go ahead, then.

18 Q. (By Mr. Meyers) Now, Mr. Martin, you had
19 stated that I said during the last hearing that I
20 would be handling all of the Texas cases myself. Is
21 that what you said?

22 A. That's pretty close to how I recall it.

23 Q. Okay. I didn't know that you were going to
24 raise that point, so it's going to take me some time
25 to find in this transcript exactly what I said. But

1 does it sound right to you that I said I was going
2 to have to handle all of the future cases, future
3 Texas or the foreseeable future Texas trials myself?
4 Does that sound right?

5 MS. MALONE: Your Honor, I would be happy
6 to provide with him a page and line number, and I'm
7 happy to give Mr. Martin --

8 THE COURT: I think that will move things
9 along better.

10 MS. MALONE: It's page 112.

11 May I approach the witness, Your Honor?

12 THE COURT: Yes, you may.

13 MS. MALONE: It's at page 112. His
14 testimony that we were referring to begins at line 9
15 going through 14, saying that he would make sure his
16 name was involved.

17 THE WITNESS: What line does it start on?

18 All right. Starting on page 112, line 9:
19 I explained to her then -- her being Ms. Malone --
20 that I was in the process of getting admitted to
21 these courts, before federal courts in Texas, so I
22 could actively make sure under my name, directly, as
23 opposed to my firm name, which is my name, that none
24 of this ever occurred again.

25 THE COURT: And to be clear, this is

1 Mr. Meyers speaking. You are reading Mr. Meyers'
2 statements from the record at the last hearing.

3 MR. MARTIN: Yes.

4 THE COURT: Okay.

5 Q. (By Mr. Meyers) I assume, Mr. Martin, that you
6 read my affidavit that I submitted prior to the last
7 hearing?

8 A. Yes.

9 Q. Okay. And you recall in that affidavit me
10 stating, prior to what occurred in this case, it was
11 not my intent to handle all foreseeable future Texas
12 trials myself or to personally handle all of
13 Ms. Malone's cases as lead counsel? Do you recall
14 that?

15 A. A little bit. I'm confused on what time frame
16 that's referring to, though.

17 Q. The affidavit was filed on October 2nd.

18 A. Right. Is that statement referring to the
19 future or your past intent?

20 THE COURT: Mr. Meyers, let me -- you tend
21 to be a little confusing when you question -- so far
22 when you're questioning him because of asking him
23 just things that are in a general transcript
24 somewhere. But based on the point that you just
25 made about that you couldn't possibly handle all of

1 the Texas cases yourself, is that what you were
2 saying?

3 MR. MEYERS: No, Your Honor.

4 THE COURT: What were you saying?

5 MR. MEYERS: What I was saying --

6 THE COURT: Okay. Hold on a second. I
7 will just read it. It says: Okay. And you recall
8 in that affidavit me stating, prior to what occurred
9 in this case, it was not my intent to handle all
10 foreseeable future Texas trials myself or to
11 personally handle all of Ms. Malone's cases as lead
12 counsel?

13 Okay. That was your question. What you
14 said at the hearing was: And I aver to the Court --
15 this is page 112, line 15: And I aver to the Court,
16 for what it's worth to the Court, that as soon as I
17 clearly understand all of the things that the Court
18 does not care for, that they will never happen again
19 by anyone at my law firm or by me, given that these
20 will all be cases that I handle myself. I have
21 narrowed down my firm's active caseload
22 significantly over the course of the year to make
23 sure that I have an absolute handle on everything
24 that occurs.

25 So that seems to be slightly contradictory

1 to the point that you just made, and I'm just trying
2 to get this straight. Go ahead.

3 Q. (By Mr. Meyers) Okay. If I could not sign the
4 complaint, the one complaint that you mention that
5 was filed, if I could not review that complaint, do
6 you suggest I should have signed it?

7 A. I can't really answer that. I mean, it's kind
8 of contradictory to what you said, and we are
9 dealing with an electronic signature.

10 Q. Okay. Do you let things get electronically
11 signed with your name that you don't review?

12 A. Well, I make ways to review them.

13 Q. Is that a no?

14 A. Yes.

15 Q. Do you have any idea in the case that you
16 mention when the statute of limitations was?

17 A. No.

18 Q. Okay. And in all fairness, neither do I.

19 Do you have any reason to believe that because
20 an associate attorney admitted in that court signed
21 the complaint, that that means that I'm not going to
22 be handling that case?

23 A. Give me one second.

24 On the statute of limitations, I'm not sure for
25 lemon law if it's one year or two years, but the

1 first factual allegation is August 23rd. So it's
2 probably at least August 23rd, 2014.

3 What was your second question?

4 Q. My second question was that another lawyer at
5 the firm signed a complaint that I was not capable
6 of reviewing. Does that mean that I am not going to
7 be litigating that case?

8 A. I believe, going against your testimony so you
9 have an absolute handle on everything that occurs,
10 you would be intending to actually review answer --
11 or complaints filed in Texas.

12 Q. Do you have any idea that my firm does a
13 litigation meeting before any complaint is filed to
14 go over the factual allegations and legal
15 allegations --

16 A. No.

17 Q. -- in a complaint?

18 A. No.

19 Q. Okay. If I tell you that we do, do you have
20 any evidence to dispute that?

21 A. No.

22 Q. And that's different than actually looking at a
23 finalized product, right?

24 A. Can be.

25 Q. Okay. You mentioned a website article and a

1 few Twitter postings. Do you recall that?

2 A. Yes.

3 Q. Okay. Do you know that I fired the company who
4 was running that website and posting because I
5 didn't feel that they were putting forth proper
6 material? Did you know that?

7 A. No.

8 Q. Did you know that since the time I fired them,
9 which would have been after the July post that you
10 mentioned, that I've actually done the Twitter
11 posting myself?

12 A. No.

13 Q. Okay. Does saying Texas clients deserve
14 Texas-size representation, what does that mean?

15 A. Sounds like soliciting business in Texas.

16 Q. Okay. I have to admit since I fired that
17 company I just started to even get into social
18 media. I don't do it personally.

19 THE COURT: Let's -- you can testify again
20 if you need to, but I think we ought to make it
21 questions. Okay?

22 MR. MEYERS: Sure. Yes. Yes, Your Honor.
23 I'm sorry. I'm sorry.

24 Q. (By Mr. Meyers) Mr. Martin, Exhibit 8 in my
25 set of exhibits -- may I bring up my exhibits for

1 the witness, Your Honor?

2 THE COURT: You may. Why don't you take
3 the rest of them and put them down on that lower
4 shelf so they are not sitting right there. I prefer
5 you put them down there.

6 MR. MEYERS: Right here?

7 THE COURT: Yes. Okay.

8 Q. (By Mr. Meyers) Exhibit 8, Mr. Martin, that's
9 Defendant CreditWatch's Response to Plaintiff's
10 Motion for Attorney's Fees in the trial where Noah
11 and I were present and Ms. Malone was present and
12 you were present a couple of the days, maybe through
13 some of it.

14 A. I believe I missed one of the days.

15 Q. You missed one of the days?

16 A. But yes, that's the pleading from it.

17 Q. Your signature appears on this pleading, does
18 it not?

19 THE COURT: Excuse me.

20 MS. MALONE: Your Honor, I would like to
21 make a formal objection and reiterate, this document
22 is a pleading, a live pleading in an ongoing case in
23 Judge Means' court. To my knowledge nothing about
24 this document -- there's been no allegation that
25 Mr. Martin or myself has done anything improper in

1 this court. I don't see how documents from other
2 lawsuits are -- other than to try to suggest we have
3 done something improperly, which we have had no
4 notice or any allegations, would be proper for the
5 purposes of this hearing.

6 THE COURT: Overruled. You are not on
7 this hearing for sanctions against you nor is
8 Mr. Martin. Other cases have been brought up by the
9 defense, and I will let him do that to an extent.
10 Go ahead. What's your question?

11 MR. MEYERS: Thank you, Your Honor.

12 Q. (By Mr. Meyers) You signed this pleading,
13 Mr. Martin?

14 A. It's actually Robbie Malone.

15 Q. Does your name appear on the pleading?

16 A. My name is in the signature block.

17 Q. Okay. Do you endorse the pleading?

18 A. Yes.

19 Q. Okay. The reason I'm asking you questions
20 about this pleading --

21 THE COURT: I thought we were going to
22 stick with questions.

23 MR. MEYERS: I'm sorry?

24 THE COURT: I thought we were going to
25 stick with questions.

1 MR. MEYERS: Yes, Your Honor. I'm sorry.

2 THE COURT: Go ahead.

3 Q. (By Mr. Meyers) Have you reviewed this
4 pleading, Mr. Martin?

5 A. It's been a while, but yes.

6 Q. On page 3 of this pleading, at paragraph 5,
7 there is a sentence that this paragraph speaks to
8 about what several courts have thought about
9 Weisberg & Meyers' fee petitions.

10 Are you familiar with that?

11 A. Yes.

12 Q. Do you know how these cases, these handful of
13 cases were selected for inclusion in your brief?

14 A. Research.

15 Q. Okay. Did you research all of the cases
16 involving Weisberg & Meyers?

17 THE COURT: Okay. Now I understand where
18 the limitations ought to be. Obviously, the
19 sanctions motions are against you and Mr. Radbil and
20 your firm. There could be a credibility point that
21 could be made where something in the course of this
22 case was done that you think is the same kind of
23 conduct, the other side, goes to credibility and how
24 reasonable your point is. And perhaps something in
25 another case might be, but it certainly doesn't open

1 the door for you to get into asking them about
2 attorney-client privileged issues in other cases.
3 They have not waived that, their client hasn't
4 waived it, so I think that's inappropriate,
5 Mr. Meyers. So I won't allow you to ask those kind
6 of questions about a pending case or even if a case
7 is over if attorney-client privilege still stands.

8 MR. MEYERS: I am terribly sorry. That
9 wasn't my intent.

10 THE COURT: I understand, but that's what
11 you were effectively doing even if that wasn't your
12 intent. Let's move on to another point. Another
13 point. New point.

14 MR. MEYERS: Okay. I hope this is a new
15 point, Your Honor.

16 THE COURT: I do, too.

17 Q. (By Mr. Meyers) I'm curious how come you did
18 not provide the Whatley court with a full
19 recitation --

20 THE COURT: Same question.

21 MR. MEYERS: Okay.

22 THE COURT: You're getting into
23 attorney-client work product and that type of thing.

24 MR. MEYERS: Yes, Your Honor. Yes, Your
25 Honor.

1 THE COURT: You've made the point.

2 MR. MEYERS: Yes, Your Honor.

3 Q. (By Mr. Meyers) On page 8, paragraph 14 of the
4 same pleading, Mr. Martin, there is a statement in
5 paragraph 14 that Marshall Meyers, Aaron Radbil, Joe
6 Panvini, Dennis Kurz, and Russell Thompson are
7 attorneys not licensed in Texas, either by the state
8 or by the United States District of Texas.
9 Mr. Meyers is admitted pro hac vice. Do you see
10 that?

11 A. Yes.

12 Q. Mr. Radbil was not admitted in a Texas court or
13 the State of Texas. Do you know if Mr. Kurz was
14 admitted in the State of Texas and the four district
15 courts at the time this pleading was written?

16 A. I don't recall.

17 Q. I'm sorry?

18 A. I said I don't recall.

19 Q. Do you know if I was admitted in the Eastern
20 District of Texas and not pro hac vice at the time
21 of this trial?

22 A. I would assume I researched it at the time;
23 hence why I wrote, Mr. Meyers is admitted pro hac
24 vice.

25 Q. If I showed you the certificates showing when I

1 was admitted in that court, would you believe that
2 at the time that you wrote this, on July 15th, that
3 I was admitted in that court and that Dennis Kurz
4 was admitted in every court in Texas and that Joe
5 Panvini and Russell Thompson were admitted in all
6 four federal courts in Texas at the time you wrote
7 that?

8 A. It's possible.

9 Q. On line 20 -- I'm sorry, paragraph 20, page 11,
10 Mr. Martin --

11 A. Okay.

12 Q. -- the paragraph starts: In the present case,
13 plaintiff's action can be considered anything but a
14 successful suit.

15 And continues: By all accounts, the matter was
16 completely unsuccessful.

17 Do you see that?

18 A. I'm not sure about the last part you stated.

19 Q. It's the fifth line from the end of the
20 paragraph.

21 A. Okay.

22 Q. You've -- you've seen the jury verdict. You
23 might have even been there for the jury's verdict in
24 that case.

25 Was that case completely unsuccessful for the

1 plaintiff?

2 A. In my opinion, yes. He only recovered a
3 thousand dollars statutory, no actual damages, under
4 the FDCPA claims.

5 Q. Did he recover under the TCPA?

6 A. The reason that's not addressed in this motion
7 is because attorney's fees aren't recoverable, and
8 this is in response to your request for attorney's
9 fees.

10 Q. Okay. The maximum statutory damage in the
11 FDCPA is a thousand dollars, right?

12 A. Yes.

13 Q. And that's completely unsuccessful, getting the
14 maximum?

15 A. In comparison to what was sought, I believe so.

16 Q. Do you recall the amount of actual damages that
17 were asked for?

18 A. I don't think there was ever a number out
19 there.

20 THE COURT: Mr. Meyers, what were your
21 attorney's fees in that case?

22 MR. MEYERS: I believe \$78,000, Your
23 Honor -- strike that. They were considerably higher
24 than that. We reduced them because we did not seek
25 time for the TCPA claims.

1 THE COURT: How much did your client get?

2 MR. MEYERS: It's still pending.

3 THE COURT: What is the amount that is
4 speculated he will get.

5 MR. MEYERS: He should get \$9,000, Your
6 Honor.

7 THE COURT: Based on what?

8 MR. MEYERS: Based on a thousand dollars
9 for the FDCPA and \$500 a call for the 16 calls we
10 asked for. We, of course in our briefing, asked for
11 treble damages as well, and I am about to hit that
12 brief, Your Honor.

13 THE COURT: Your client is asking for at
14 least 78,000 -- you are asking at least \$78,000 in
15 attorney's fees.

16 MR. MEYERS: Yes.

17 Q. (By Mr. Meyers) And on the point that Judge
18 Boyle just made, you're familiar with the Whaley v.
19 Lockhart case, right?

20 A. Yes.

21 Q. Your verdict is one of your exhibits, right?

22 A. Yes.

23 Q. You sought and received attorney's fees in that
24 case under a contract provision for debt collection,
25 right?

1 A. It's actually a Texas statute for breach of
2 contract claims, so it's not actually a debt
3 collection rule.

4 Q. And in the proposed judgment that you presented
5 to the Court, you asked for, I believe, \$105,000 in
6 attorney's fees.

7 A. I don't recall.

8 Q. Okay. The judgment is one of your exhibits.
9 And you collected or received a judgment of about
10 \$6,500 was the -- strike that.

11 From -- on the breach of contract claim,
12 itself, after the 600-or-so-dollars that the
13 plaintiff recovered, your collected amount,
14 according to the jury's verdict, was about \$6,500,
15 right?

16 A. I think the amount of our judgment was \$6,150,
17 and that claim was only brought because it was
18 asserted as a counterclaim.

19 Q. But you had asked for in the judgment or the
20 proposed judgment \$109,441.79?

21 THE COURT: Mr. Meyers? Mr. Meyers, what
22 is the point of this? Where are you going with
23 this? What does it prove?

24 MR. MEYERS: It proves, Your Honor, that
25 to the extent that the other side thinks that a

1 78,000-dollar request is unfair, that they have a
2 100,000-dollar request.

3 THE COURT: They didn't say that. I'm
4 just trying to figure out where it is you're going
5 or what it is you're proving in any way that's
6 salient to the issues in this case by asking them
7 about other cases and what they asked for.

8 I can understand if they were accused of
9 similar conduct or something maybe to a certain
10 extent, but you are the one here looking at
11 sanctions, not them. And it doesn't give you the
12 right to go through every case and ask them every
13 little question about attorney-client privileges.
14 It's really just a waste of time. So I want you to
15 move off this point and get to points that help you
16 establish your theory of this sanctions motion,
17 defense.

18 MR. MEYERS: Yes, Your Honor. I'm trying
19 to do that.

20 THE COURT: It doesn't -- but you're not.
21 So what I'm telling you is to move on to something
22 else besides nitpicking through what it is they
23 thought and what their strategy was in unrelated
24 cases, unless you can tie it to something that bears
25 upon the issues that I have to decide in this case.

1 And so far you haven't done that, so let's move
2 ahead.

3 MR. MEYERS: Yes, Your Honor. I will hold
4 any further explanation of what I was trying to do.

5 THE COURT: It's not time for you to
6 explain, it's time for you to ask questions. You
7 have had a lengthy time on the witness stand to
8 explain. So let's move on to some points that bear
9 upon the issues of your defense. Okay?

10 MR. MEYERS: Yes, Your Honor.

11 THE COURT: Don't need any comments, just
12 need you to start asking questions. Okay?

13 MR. MEYERS: Yes, Your Honor.

14 Q. (By Mr. Meyers) In Exhibit 9, Mr. Martin --

15 A. Okay.

16 Q. -- you wrote that brief?

17 A. Yes.

18 Q. Okay.

19 THE COURT: Before we get into this, just
20 tell me what it is that you are going to go towards
21 with this brief questioning. What is it that you
22 are going to ask him about that hopefully will make
23 a point for you.

24 MR. MEYERS: What I am going to ask him is
25 why he states that I mislead the Court and that I

1 disingenuously claim and disingenuously state.

2 THE COURT: All right. Let's ask him
3 that.

4 Q. (By Mr. Meyers) So you state, Mr. Martin, that
5 plaintiff misleads the Court initially requesting
6 and arguing 23 violations.

7 A. Could you give me a page number?

8 Q. Yes. It's page 8, the top of page 8, header C.

9 A. My recollection of this was, after the trial in
10 the courtroom -- it might be on the record of the
11 case. But I believe that you had conceded post-jury
12 argument that there's only I think 16 calls that you
13 would end up being seeking damages, where your
14 motion that this is in response to mentioned that
15 you were seeking it for 23 but then would reduce it
16 for another number.

17 Q. Did the jury come back with 23 calls,
18 Mr. Martin? The verdict is included if you need to
19 see it. It's an exhibit.

20 MS. MALONE: Your Honor, just by objection
21 on --

22 THE COURT: You need to speak up and slow
23 down.

24 MS. MALONE: I'm sorry, I apologize.
25 Under the rule of optional completeness, if

1 Mr. Martin would look at page 9, it is Mr. Meyers'
2 actual testimony to the Court about the 23 calls,
3 that he would not seek 23 calls, whereas, his
4 briefing motion, in fact, did.

5 THE COURT: Okay.

6 Q. (By Mr. Meyers) Do you recall, Mr. Martin,
7 that the jury found 23 calls?

8 A. I don't recall. I don't see the verdict here.

9 Q. Okay. The verdict is part of the record, and
10 it shows --

11 THE COURT: I thought we were going to
12 stick with questions.

13 MR. MEYERS: Sorry.

14 Q. (By Mr. Meyers) Do you recall, Mr. Martin, the
15 memorandum regarding the TCPA that I submitted to
16 the Court that you were going to respond to?

17 A. Vaguely.

18 Q. Okay. Vaguely? Okay.

19 A. Sure.

20 Q. On page 9 of this exhibit that we are
21 discussing, number 9 --

22 A. Okay.

23 Q. -- you state in paragraph 15 that I
24 disingenuously state, quote, after the jury returned
25 its verdict, however, Mr. Wiley informed this Court

1 that he would seek damages for only 16 of
2 CreditWatch's violations.

3 Do you recall that?

4 A. Sure.

5 Q. Okay. And do you recall exactly what I said in
6 the motion seeking damages under the TCPA?

7 A. No.

8 Q. Okay. I stated: After the jury returned its
9 verdict, however, Mr. Whatley informed this Court
10 that he would seek damages for only 16 of
11 CreditWatch's violations. Accordingly, he asks it
12 to award him \$500 for each of the 16 violations and
13 then to treble that award. In all, he seeks \$24,000
14 under the TCPA.

15 A. Okay.

16 Q. Okay. Is that disingenuous, that I was asking
17 the Court for 16 calls when I expressly said that?

18 A. I think it could have been worded better maybe.
19 But I believe it's referring to disingenuously by
20 leading the memorandum off, arguing about 23 calls
21 and entitling him to 11,500 when, apparently, the
22 records showed otherwise, that there were not 23
23 calls.

24 And then also the fact that --

25 Q. Thank you, Mr. Martin.

1 THE COURT: Why don't you let him finish.

2 A. -- how in the transcript -- or the record of
3 the case recited on page 9 at the very top, how you
4 stated, now there are 18 calls total, and in your
5 memorandum you state there are 23 calls made. So he
6 is entitled to 11,500 rather than the multiplier of
7 18 calls.

8 Q. Okay. Exhibit 7 is the jury's verdict, and you
9 can see that the jury came back with 23 calls; is
10 that correct?

11 A. What page did you say again?

12 Q. It's Exhibit 7?

13 A. And what page is it?

14 MR. MEYERS: I think I may have given him
15 one of my books, Your Honor.

16 THE COURT: Tell him what page. Why don't
17 you approach.

18 A. What catches my attention is Question Number 5
19 on page 2 of Exhibit 7, it states: How many calls,
20 if any, do you find from a preponderance of the
21 evidence were made by defendant to plaintiff's cell
22 phone using an ATDS without consent in violation of
23 the TCPA? And the answer there is 16.

24 Q. And then on the next page?

25 A. How many calls, if any, do you find from a

1 preponderance of the evidence were made by defendant
2 to plaintiff's cell phone using an artificial or
3 prerecorded voice without consent in violation of
4 the TCPA? And the answer there is 7.

5 And I believe part of the basis of how many
6 calls are argued, obviously you had admitted that
7 there were 18 calls made. And totaling up these two
8 numbers is the 23 you speak of, but there is also
9 the possibility, which I believe is the fact in this
10 case, that those phone calls overlap.

11 Q. And that they overlap was, in fact, why I said
12 16 calls to the Court; isn't that right?

13 A. I don't know your purpose of your statement.

14 Q. But you would agree that after the jury
15 returned its verdict, however, and Mr. Whatley
16 informed the Court that he would seek damages for
17 only 16 of CreditWatch's violations, accordingly he
18 asked it to award him \$500 for each of those 16
19 violations and then to treble that award. That's
20 pretty clear that I'm only asking for 16, right?

21 A. Give me one second. I believe if that was his
22 intent -- or your intent, that your memorandum for
23 the TCPA damages wouldn't have led off stating there
24 were 23 calls and he's entitled to 11,500 damages.
25 It could have led off stating there are 16 calls

1 he's stating damages for.

2 Q. Is it possible that in the memo I strictly
3 stated what the jury verdict said?

4 My point, Mr. Martin is, in your brief, you say
5 I mislead and I am disingenuous, yet it's crystal
6 clear I said I asked for 16 calls.

7 A. It's my opinion that you were disingenuous
8 stating that there were 23 calls when you had
9 previously said 18.

10 Q. That same memo that we are speaking about, I
11 write: Here the jury found that CreditWatch made 16
12 calls to Mr. Whatley's cell phone. It also found
13 that CreditWatch made seven calls to Mr. Whatley's
14 cell phone using artificial and prerecorded device.

15 MS. MALONE: Your Honor, I'm going to
16 object to reading documents into the record that are
17 not evidence. It's really unfair to ask the witness
18 to testify to something that's not in front of him.

19 THE COURT: Is what you are reading from
20 in evidence, Mr. Meyers?

21 MR. MEYERS: No.

22 THE COURT: I sustain the objection.

23 Q. (By Mr. Meyers) Mr. Martin, was -- before, you
24 were reading from a website about the Timothy White
25 case, you were reading from a Twitter account, is

1 that it?

2 A. What's your question?

3 Q. Were you reading from a Twitter account?

4 A. When?

5 Q. When you were testifying in response to
6 Ms. Malone's questions?

7 A. Yes, I was refreshing my recollection.

8 Q. Okay. Was what you were reading into the
9 record in evidence?

10 A. No.

11 Q. Okay. In your motion for sanctions --

12 A. Which one?

13 Q. The 1927.

14 A. Okay.

15 Q. -- you make the allegation that my office did
16 not communicate the \$1,000 offer to Mr. White. Do
17 you recall that?

18 A. There is evidence that that's possible.

19 Q. Have you had the opportunity to review
20 Mr. Radbil's Exhibit 34, the affidavit of Dr. White?

21 A. Yes.

22 Q. Okay. After you reviewed that affidavit, do
23 you still think that the offer was not communicated
24 to Dr. White?

25 A. What part of it are you referring to?

1 Q. What part of the affidavit?

2 A. Sure.

3 Q. Well, I'm referring to the affidavit and the
4 exhibits in general.

5 THE COURT: Well, you need to give us an
6 exhibit number.

7 MR. MEYERS: It's Exhibit 34, Your Honor.

8 THE COURT: So why don't you make sure
9 he's got that. It's not going to be in plaintiff's
10 exhibits, it's going to be in Radbil's Exhibits, 34.

11 THE WITNESS: I've got it.

12 THE COURT: Unless you have it there.

13 THE WITNESS: Radbil's exhibits, and yes,
14 I have a copy.

15 A. Regarding whether an offer was conveyed, the
16 evidence shows that maybe an offer was conveyed, and
17 it's more shifted to whether Dr. White actually knew
18 what the consequences of Rule 68 were.

19 And throughout the proceedings, his testimony
20 in court, he stated that he did not know the
21 repercussions of Rule 68 regarding our settlement
22 offer of judgment. And then now is this Exhibit 34,
23 where it seems to contradict his testimony on the
24 record at trial.

25 Q. Okay. In paragraph 2 of that affidavit,

1 Mr. Martin --

2 A. Okay.

3 Q. -- Dr. White says: Mr. Meyers communicated to
4 me RAB's offer of judgment in the amount of \$1,000.
5 Mr. Meyers explained that the offer was tendered
6 under Rule 68 of the Federal Rules of Civil
7 Procedure and explained to me the consequences of my
8 decision not to accept or respond to the offer.

9 Is that right?

10 A. I wasn't party to that conversation, so I don't
11 know how it was explained or anything, but that's
12 what it says.

13 Q. Okay. And I would like to -- do you recall at
14 the first hearing when we presented to the Court the
15 e-mail between Dr. White and myself, and Ms. Malone
16 objected that graycats@hotmail did not indicate it
17 was Dr. White's e-mail address? Do you recall that?

18 A. Yes.

19 Q. Okay. Paragraph 11, Dr. White confirms that
20 that is, in fact, his e-mail address?

21 A. Yes.

22 Q. If you would just take a moment, Mr. Martin, to
23 read through Exhibits A through C of that affidavit,
24 it will only take you a moment.

25 A. Okay.

1 Q. Now that you have read the e-mails, do you
2 believe that my office did not communicate the
3 Rule 68 offer to Dr. White?

4 A. I don't believe in the evidence -- or in the
5 exhibits that there's really any evidence that the
6 repercussions of Rule 68 were explained to him.

7 Q. My question was, do you believe that my
8 offer -- my office conveyed the offer to Dr. White?

9 THE COURT: Let me ask this, because --
10 before we go any further, because there's so much
11 involved in this hearing and all the issues.
12 Ms. Malone, from your recollection -- and
13 Mr. Meyers, I think I've got yours -- but your
14 position on whether or not this is contradictory to
15 what's been offered in the record already or not and
16 how, just so that I'm clear on this.

17 MS. MALONE: Your Honor, at the trial --
18 and I was looking for the reference, and Mr. Martin
19 actually might know where it is a little faster --
20 when the Court was having a discussion with
21 Dr. White when Mr. Radbil was not here, we talked
22 about the fact that we had made an offer to him, and
23 I told the Court that I had been concerned that he
24 may not be aware of that offer based on the Lopez
25 case and the Whaley case, where we had learned in

1 deposition that their clients said they were never
2 given offers.

3 And there was a discussion between
4 Dr. White and the Court, and he seemed to indicate
5 that he was not aware that an offer had been made.
6 So that was Dr. White's testimony at trial, which is
7 certainly what Mr. Martin used in the course of his
8 motion for sanctions.

9 Then, last time, October 2nd, before the
10 third hearing, we get an affidavit from Dr. White,
11 still no Dr. White, but we get an affidavit from
12 Dr. White, which is contradictory to what his
13 testimony was to the Court. And I don't have
14 that --

15 THE COURT: We will take a break here in a
16 minute. But who obtained the declaration of Timothy
17 White?

18 MR. MEYERS: Mr. Jefferson, Mr. Radbil,
19 and I all spoke to Dr. White.

20 THE COURT: Okay. So it was pretty
21 recent?

22 MR. MEYERS: Prior to the last hearing,
23 yes, Your Honor.

24 THE COURT: So he's local, and you know
25 how to reach him?

1 MR. MEYERS: Yes. Yeah.

2 THE COURT: Can I get a phone number? I
3 think we need to get him down here.

4 MR. RADBIL: 214 -- I don't remember the
5 remember the middle, but the last four are 1163.

6 THE COURT: That won't help me.

7 MR. RADBIL: I will grab it.

8 THE COURT: Okay. I would like to call
9 him. I think we need to have him down here and
10 answer some questions.

11 MR. RADBIL: The U.S. Marshal has my
12 cellular telephone outside.

13 THE COURT: Does he work at the same place
14 he used to?

15 MR. RADBIL: Simple Surrogacy.

16 THE COURT: Where did you all go to get
17 the affidavit? Was it at his office or home or
18 what?

19 MR. RADBIL: It was a conference call,
20 Your Honor.

21 THE COURT: Conference call. But the
22 affidavit must have gone to him to sign.

23 MR. JEFFERSON: I can actually explain
24 that, Judge.

25 THE COURT: Mr. Jefferson.

1 MR. JEFFERSON: Yes. And I can't remember
2 who found it, but apparently there is a mobile
3 notary service. And so what happened was, was that
4 the affidavit was put together, I think by
5 Mr. Meyers. Mr. Meyers sent the affidavit to my
6 office, and my secretary e-mailed it to the mobile
7 notary service of Dallas, who then drove it out to
8 Dr. White's home, which is -- and I apologize, I
9 don't know my Dallas suburbs, but it was in some
10 suburb. And then it was scanned and e-mailed back
11 and then filed. And whatever day all the exhibits
12 were filed was the day that that happened.

13 THE COURT: Okay. And I'm not faulting
14 anything you have done, Mr. Jefferson. If anything,
15 you have been a breath of fresh air in these
16 proceedings. But I think we need to talk to
17 Dr. White, and I think we need to locate him. And
18 if he won't come, we will get him subpoenaed by the
19 Court to be down here and answer some of this,
20 because this goes to the crux of what happened. And
21 I talked to him directly during the trial the day
22 that Mr. Radbil didn't come, and it seems to be very
23 different. And so it does worry me that he's taken
24 a step back from what he said.

25 We're going to take a ten-minute break. I

1 would like to get that phone number so we can
2 contact him and just find out what his side of the
3 story is in person.

4 We will be in recess.

5 (Recess taken from 11:31 to 11:43.)

6 THE COURT: I have the number, and I think
7 we will move on, Mr. Meyers. And Mr. Martin, if you
8 will come back up here.

9 MR. MEYERS: Your Honor, I would like to
10 correct one thing I didn't have the opportunity to
11 correct.

12 THE COURT: Okay.

13 MR. MEYERS: You had asked who prepared
14 the affidavit. I prepared paragraphs 1 through 5
15 and paragraph 11, and then I forwarded it to
16 Mr. Jefferson and Mr. Radbil, and I don't know what
17 happened after that point. I'm not having any
18 problem with the affidavit, but just for the point
19 of accuracy.

20 THE COURT: Okay. Let's go ahead with
21 more questions, please.

22 Q. (By Mr. Meyers) Mr. Martin, do you recall at
23 the first hearing Judge Boyle asked if we coached --
24 and that may not be her exact word -- Mr. White to
25 testify as to an amount of actual damages, and we

1 said no? Do you recall that?

2 A. Somewhat.

3 Q. Okay. And at that point --

4 THE COURT: I think what happened is that
5 originally, at the first hearing maybe, your
6 explanation for Dr. White's, I guess, outburst was
7 how you described it then, was that he was a rogue
8 client at some point. And then it kind of changed
9 and got tempered into a different issue, but you
10 said he was a rogue client.

11 And I don't know where your theory is now,
12 but that's how -- as though you weren't -- this
13 testimony was never expected or intended to come
14 out, given the fact that a damages amount had never
15 been disclosed to the defense. And I just want to
16 be clear on that. Go ahead.

17 MR. MEYERS: I'm not in any position to
18 argue with the Court. I don't believe that those
19 were my exact words, but I understand the point the
20 Court is making.

21 THE COURT: All right. Go ahead.

22 Q. (By Mr. Meyers) Do you recall more or less
23 that, Mr. Martin?

24 A. I can't necessarily agree with your summary of
25 it, but I remember discussions regarding the

1 testimony.

2 Q. Okay. Would it be fair to say that on that
3 point at the sanctions hearing --

4 THE COURT: Which sanctions hearing are we
5 talking about?

6 MR. MEYERS: The first day, Your Honor.

7 THE COURT: The first one?

8 MR. MEYERS: Yes, Your Honor.

9 THE COURT: And what page are we talking
10 about in the transcript? That's going to be August
11 the 2nd.

12 MR. MEYERS: It is, Your Honor. I don't
13 know the answer to that.

14 THE COURT: Okay. I have it up here, and
15 I want to find what we are talking about.

16 MS. MALONE: Your Honor, the language
17 where Mr. Meyers described his client as being --
18 and I quote -- actually kind of rogue, it appears at
19 page 142.

20 THE COURT: Of the first transcript?

21 MS. MALONE: Yes, ma'am.

22 THE COURT: If you have that, take a look
23 at it. I want to make sure that the record doesn't
24 blur or confuse what was said in a prior hearing,
25 especially on important points.

1 And on that page in the first transcript
2 starting at line 4 -- well, let me go to the page
3 before. I asked something about where your
4 questions were going to with regard to calculation
5 of damages and fair settlement, something of that
6 nature. And in response to that area of questioning
7 on line 4 of page 112 of that first transcript.

8 MS. MALONE: 142, Your Honor.

9 THE COURT: 142, I'm sorry. It's: Yes.
10 It's going to the point that we did not counsel
11 Dr. White to talk about this 40,000 in interest and
12 penalties and this 5,000 that he didn't get a chance
13 to teach a class. It was actually kind of rogue.
14 I'm not finding fault with him.

15 So that's what you said that day. And
16 then I was asking: So he just came up with it?

17 And you say: When he say, he just came up
18 with it --

19 And I said: Well, you tell me. What does
20 that mean?

21 And you said: What it means, Your
22 Honor -- and this is you, Mr. Meyers -- is under no
23 set of circumstances did we ever say to him, you
24 need to say you have 40,000 in interest and
25 penalties and 5,000 in a class that you couldn't

1 teach. As a matter of fact, Your Honor, we
2 disagreed with it. It didn't make any sense.

3 So that's what you said. And on that
4 note, at the trial, itself, when that testimony was
5 beginning to be elicited by Mr. Radbil and
6 Ms. Malone asked for a sidebar, she objected because
7 this figure had not been disclosed. And Mr. Radbil
8 indicated he wasn't sure what the answer would be.

9 And I said, you expect that he's got an
10 answer, something like favorable to you or something
11 of that nature, and Mr. Radbil said yes.

12 So understanding that, I sustained the
13 objection because it was directly violating the
14 ruling I had made earlier about no damages
15 disclosed, no damages testified about.

16 So let's move on to your next point.

17 Q. (By Mr. Meyers) Paragraph 9 of Dr. White's
18 affidavit, Mr. Martin --

19 A. Okay.

20 Q. -- could you just take a moment to read that?

21 A. Okay.

22 Q. Do you believe, as we sit here today, that Noah
23 or I -- Mr. Radbil or I instructed Dr. White to
24 provide the jury a specific dollar figure in
25 damages?

1 A. I'm not quite sure what to believe on y'all's
2 communications and what he did.

3 Q. Thank you.

4 Mr. Martin, if I told you that I'm looking at a
5 certificate from the Eastern District of Texas that
6 says I was admitted on April 24, 2013, would you
7 believe me?

8 A. Maybe.

9 Q. If I told you I was looking at a certificate
10 from the Southern District of Texas stating I was
11 admitted on June 13th, 2013, would you believe me?

12 A. Quick thing about these is, I'm not sure at the
13 time if I may or may not have researched whether you
14 were admitted, whether it's a period of processing a
15 request, and it could take a period of days for it
16 to be processed, and I don't know if it ends up
17 being retroactive to when an application is made.
18 So I couldn't really tell you when you were licensed
19 or not.

20 Q. Do you know why I asked you those questions?

21 A. I believe it has to do with the CreditWatch
22 briefing.

23 Q. Right. I assumed that you just made a mistake.

24 A. I don't necessarily know if I made a mistake or
25 not. If, according to my research checking on those

1 Court's websites, it says you were not licensed,
2 then I believe I would have been correct at the
3 time, so. . .

4 Q. Okay. Ms. Malone, when she was examining me,
5 asked a particular line of questioning about
6 Mr. Radbil on two occasions arguing that you have to
7 strike -- during the jury selection process and who
8 goes first peremptory, cause, et cetera. Do you
9 recall that?

10 A. Yes.

11 Q. Do you recall her mentioning that he did it
12 twice, right?

13 A. That what?

14 Q. That he did it on two occasions.

15 A. No, I don't think that was said.

16 Q. Okay.

17 A. I think what was said was he did that in the
18 Brown case and then brought it up in the motion for
19 new trial, but I could be wrong. I don't believe it
20 was said that he did that twice.

21 Q. Okay. And I could be wrong. Thank you.

22 The way you phrase it, he did it at the Brown
23 trial and then brought it up in the Brown motion for
24 new trial. Is that to suggest that it's wrong to
25 reargue a decided issue?

1 A. No; I was just stating that it was an issue
2 twice in that case.

3 Q. Okay. If a lawyer makes a mistake on one
4 occasion, do you find that objectionable? Do you
5 find that an affront to the profession?

6 A. I mean, people probably have different --
7 differentiating definitions of mistake, and it
8 depends on what was actually a mistake or not,
9 whether something was intentional. It's a little
10 broad to answer to one specific thing the way you're
11 asking it.

12 Q. Okay. Do you think someone could make the same
13 mistake four times in four different cases?

14 THE COURT: Are we talking about the issue
15 where Mr. Radbil argued as a legal matter that
16 peremptory strikes come before strikes for cause?

17 MR. MEYERS: I was just talking generally,
18 Your Honor.

19 THE COURT: Isn't that what the argument
20 was, though? It was about peremptories versus
21 strikes for cause.

22 MR. MEYERS: I believe it was, Your Honor.

23 A. Could you repeat your question?

24 Q. (By Mr. Meyers) Yes. Do you believe -- and
25 that's -- I asked you -- I believe this happened in

1 the White case, and I could be wrong. But do you
2 believe that a lawyer can make the same mistake,
3 mistake of a legal argument, in four separate cases?

4 A. It's possible.

5 Q. Okay. So what would distinguish between
6 someone making a mistake four times and someone
7 doing it on purpose four times?

8 A. Well, that kind of goes to what I was saying
9 about the definition of mistake. If it's on
10 purpose, it might not be a mistake.

11 Q. Okay.

12 THE COURT: Also -- and again, I feel the
13 need to just fill in the blanks here at some point,
14 I have heard so much of this.

15 This is the same lawyer that you're
16 touting on your firm website as experienced trial
17 counsel. And at least in some advertising up there,
18 I recall from the last time, it indicated he had
19 represented college students towards the NCAA issues
20 and a major league baseball player. So yes, that be
21 inconsistent if that kind of representation is being
22 made out there and that kind of mistake, pretty
23 basic voir dire mistake is being made.

24 Q. (By Mr. Meyers) Mr. Martin, I understand one
25 of the issues in this case is that a lawyer and a

1 witness say contradicting or conflicting things; is
2 that right?

3 A. Are you referring to the amount of damages in
4 the testimony?

5 Q. For example, sure.

6 A. Yes, that is one of the issues generally.

7 Q. Okay. And that a lawyer and a witness say
8 different things. Does that make the lawyer a liar?

9 A. Depends.

10 Q. Okay. Have you ever been involved in a case
11 where a witness or two have made one statement and
12 then a lawyer or two have made the opposite
13 statement?

14 A. Not that I recall.

15 Q. Okay. Do you recall in the Whatley v.
16 CreditWatch case that two witnesses for the
17 defendant spoke about the existence of a contract
18 and two lawyers for the defendant said the contract
19 didn't exist? Do you recall that?

20 A. In regards to that, if there was a written
21 contract, there's a difference between one being --
22 how do I word this? I understand what you are going
23 towards.

24 At one time there was a written contract. No
25 one has seen it since. So there is a difference --

1 the testimony that you are referring to of the two
2 CreditWatch witnesses, they both stated there is or
3 was a written contract, not that they had it or
4 anything.

5 Q. So you're making a distinction between someone
6 acknowledging the existence of the contract and the
7 existence itself.

8 A. I'm not quite sure I'm following you, there.

9 Q. My point, Mr.-- strike that. It wasn't a
10 question, Your Honor.

11 Part of the concern you have here, Mr. Martin,
12 you and Ms. Malone have here, is how difficult
13 discovery was in this case; is that right?

14 A. It's usually difficult in this case and a few
15 others with you.

16 Q. Okay. And I believe what you said is there's
17 always a few issues that we fight you on, right?

18 A. Sure.

19 Q. Okay. Would you say that there are always a
20 few issues that you fight us on?

21 A. I would say that's a fair statement.

22 Q. Okay. So, in fact, in your Rule 37 Motion for
23 Sanctions in Whatley v. AHF, do you recall that
24 motion for sanctions?

25 A. Yes.

1 Q. And what I'm talking about is, in Whatley v.
2 AHF, you heard me last time talk about the three
3 cases, White, Whatley, Whatley?

4 A. Yes.

5 Q. In Whatley v. AHF, after your side won on
6 summary judgment, you also submitted a 1927, a 37, a
7 54 and 68 Motion for Sanctions and Attorney's Fees.
8 Do you recall that?

9 A. Yes.

10 Q. Those motions were denied?

11 A. Yes.

12 Q. Do you recall including that in your exhibit
13 book?

14 A. We didn't include it in our exhibit book. It's
15 not related to this case.

16 Q. But you would agree there are things not
17 related to the case in your exhibit book, right?

18 A. I disagree with that.

19 Q. Okay. Do you recall at the beginning of the
20 first day of the hearing on August 2nd Ms. Malone
21 stating that she's never filed motions like this
22 before?

23 A. I would have to read the testimony. I think it
24 was more that she's never seen conduct like this.

25 THE COURT: It's all right. I recall the

1 testimony. Let's move ahead.

2 MR. MEYERS: Yes, Your Honor.

3 THE COURT: I recall what she said.

4 MR. MEYERS: Yes, Your Honor.

5 Q. (By Mr. Meyers) I know an issue in this case,
6 Mr. Martin, was about the dialer manual, is that
7 right, one of the issues here?

8 A. Not -- not an issue that we brought before the
9 Court.

10 Q. I'm saying an issue in the case was a dialer
11 manual, right?

12 A. It came up.

13 Q. Okay. Could you see how the dialer manual
14 could be relevant, reasonably calculable to lead to
15 the discovery of admissible evidence, a dialer
16 manual?

17 A. The situation you are referring to is a
18 situation where our client didn't have it and I
19 don't believe had access to one either. You can't
20 produce something you don't have.

21 Q. And that was the position you all took in the
22 Whatley CreditWatch case and the Brown v. Enterprise
23 case.

24 A. I'm not familiar with Brown. And in the
25 Whatley case -- are you referring to the contract or

1 the dialer?

2 Q. The dialer manual.

3 A. Not familiar with the Brown case, to answer
4 that. And with the Whatley case, I think it's the
5 same situation, they didn't have the contract or the
6 manual. The manual is what you're referring to.

7 Q. Did you read the appellate order in the Brown
8 case? Did you have a chance to read the appellate
9 order?

10 A. Yes.

11 Q. Did you have a chance to see how the appellate
12 court noted how vigorously the defendant there
13 fought to keep the manual out?

14 A. I remember that being there in dicta.

15 Q. Okay. Have you had the opportunity to review
16 the various fee awards and fee opinions issued with
17 regard to my firm?

18 A. I've looked at some more than others. But the
19 affidavit that you had filed with the Court I really
20 just casually glanced at it.

21 Q. Okay. That's Exhibit 28 of our exhibit book,
22 please.

23 A. Okay.

24 Q. Could you just take a moment to look through
25 that chart?

1 A. Sure. I'm ready.

2 Q. Okay. Do you see multiple courts have awarded
3 us 100 percent of our fees?

4 A. Well, I'm not -- I don't really recall the
5 documents these are based on, so it's hard for me to
6 answer that. And I also don't know if each of the
7 ones were 100 percent awarded. It could have been a
8 default judgment.

9 Q. So you had the time to review a handful of bad
10 opinions but not any of the good opinions, is that
11 fair?

12 A. In preparing for these sanctions hearings, your
13 attorney's fees awarded in other cases I didn't see
14 as an issue at hand.

15 Q. In the fee -- your various fee motions,
16 Mr. Martin --

17 A. In this case?

18 Q. Yes, Mr. Martin -- you speculate as to all of
19 the bad things that we do to our clients. We deduct
20 from their thousand dollars filing fees and
21 deposition costs and leave them nothing. We sue
22 them if they quit, et cetera, et cetera. Do you
23 recall that?

24 A. I think -- I don't agree with your statement.

25 Q. And do you not agree because I'm not speaking

1 verbatim, or do you not agree with the crux of what
2 you were saying?

3 A. Both. Like, for instance, how you state that
4 we sue our clients if -- how ever you state it about
5 we sue our clients. What we, to my recollection,
6 posed in our motion is that your fee agreement
7 leaves you the possibility of suing each of your
8 clients.

9 Q. And do you think that's inappropriate in and of
10 itself?

11 A. It depends.

12 Q. Was that a yes or a no?

13 THE COURT: It was an, It depends.

14 A. I believe the fee agreement is inappropriate.

15 Q. (By Mr. Meyers) Okay. Can you tell me what
16 you feel is inappropriate about it?

17 A. I believe that it takes settlement authority
18 out of your client's hands and that you use it to
19 attempt to get all of your attorney's fees in a
20 case, and if you don't, hold that against the
21 client.

22 Q. You say you believe that. Do you have any
23 evidence that I do that?

24 A. You included two, I guess, original petitions
25 in your exhibits. One had to do with where your

1 co-senior partner failed to meet with his client and
2 give her advice on an upcoming hearing in an
3 underlying debt case where she accepted a
4 settlement, and you went after her for the fees.

5 Q. Do you know the scope of that representation?

6 A. I would imagine it's for her federal FDCPA
7 claims.

8 Q. Okay. Did you have the opportunity at any time
9 to review document 147, which was an affidavit filed
10 by Russell Thompson, and then document 146 filed by
11 Joe Panvini?

12 THE COURT: Are those documents on the
13 docket sheet?

14 MR. MEYERS: Yes.

15 A. It's been a while since I reviewed them.

16 Q. (By Mr. Meyers) You had the opportunity to?

17 A. Yes.

18 Q. Did you notice in Mr. Thompson's affidavit he
19 speaks of nearly 500 cases that we had clients just
20 abandon us or defendants tell us information that
21 made us feel that their claim was right and that we
22 closed those files and didn't seek anything from
23 anyone? Do you recall that?

24 A. I don't recall it, but it doesn't mean the fee
25 agreement doesn't pose that option.

1 Q. In reaching the conclusion that the fee
2 agreement is improper, have you reviewed any ethical
3 opinions from any bar anywhere?

4 A. I read the ones that you had included in your
5 letter to the bar, and I don't think they apply in
6 this situation. And just going over the Texas
7 ethics rules, it's my opinion that it takes
8 settlement authority out of your clients' hands.

9 Q. I appreciate that that's your opinion.

10 THE COURT: Did the Arizona Bar ever give
11 you an opinion?

12 MR. MEYERS: They have not yet, Your
13 Honor.

14 THE COURT: Okay.

15 Q. (By Mr. Meyers) Did you see similarities
16 between, for example, what the District of Columbia
17 Bar said and my fee agreement?

18 A. I don't really recall.

19 Q. Okay. Did you happen to have the occasion to
20 read document 154 and its exhibits, the affidavit of
21 Tremain Davis?

22 THE COURT: Mr. Meyers, this is a
23 difficult process here, because you are asking him
24 about things that he couldn't possibly have
25 memorized seriatim. So it's kind of a waste of time

1 to ask him, when he can't be sure unless he has it
2 in front of him.

3 So it sounds like something I will be
4 reading, if I haven't already -- and I have read
5 most of this stuff -- upon submission or you have
6 already testified about it at length. But I would
7 prefer that you stick with questions that he has
8 some firsthand knowledge of. Okay?

9 MR. MEYERS: Yes, I will certainly try,
10 Your Honor. I may err, but you will put me back on
11 course, and I will be right back there, Your Honor.
12 I'm sorry.

13 Q. (By Mr. Meyers) In this case, Mr. Martin --

14 A. Uh-huh.

15 Q. -- if Dr. White didn't want \$1,000, do you
16 think that my firm did wrong in not making him take
17 \$1,000?

18 A. I don't know if you properly disclosed the
19 effects of Rule 68 or not. I can't necessarily
20 answer that.

21 Q. That wasn't my question. My question was
22 merely, if he didn't want \$1,000, do you think we
23 did wrong in not making him take \$1,000?

24 A. I think it goes, again, to settlement for
25 \$1,000 or an offer of judgment for \$1,000. If it

1 was posed as just a settlement of \$1,000 and he says
2 he doesn't want a settlement of \$1,000, then no.
3 But in this situation it was a Rule 68 offer, which
4 may or may not have made a difference.

5 Q. Okay. If ultimately he didn't want \$1,000 how
6 ever it was offered it to him, did we do wrong in
7 not making him take it?

8 THE COURT: I think that's been asked and
9 answered.

10 MR. MEYERS: Okay.

11 THE COURT: Okay.

12 Q. (By Mr. Meyers) Are you aware, prior to the
13 filing of the lawsuit, that we sent two letters to
14 your client trying to resolve this matter?

15 A. Yes.

16 Q. Okay. And are you at least now aware that
17 Dennis Kurz, in January of 2012, made an
18 8,500-dollar demand to Ms. Malone?

19 A. It's possible.

20 Q. You say it's possible based on what?

21 A. Just some discussions.

22 Q. And Dennis' e-mail attached to his affidavit?

23 A. It's been a while since I've looked at it.

24 Q. Okay.

25 THE COURT: The representation at the

1 first hearing, regardless of what you have just
2 talked about in early 2012 or something, was that
3 there was no demand made I think before and then
4 after the mediated settlement conference. And
5 that's going to be in that first transcript of this
6 August 6th hearing where Mr. Radbil said that -- I
7 said: You're telling the Court that you did, in
8 these meetings, discuss the mediated -- discuss the
9 mediated settlement matters -- I can't decipher
10 exactly my question, but it was about discussion of
11 the demand.

12 Mr. Radbil said, no -- the answer was:
13 No; that was a tiny, small piece of what I did to
14 prepare for trial in this case -- and this is
15 Mr. Radbil. In fact, we didn't understand -- we
16 didn't think the case would be tried, nor did we
17 understand the logic of proceeding after summary
18 judgment had been granted.

19 And the question was back to Mr. Radbil by
20 the Court: Did you ever give them a demand figure?

21 And Mr. Radbil's answer was: At the
22 mediated settlement conference?

23 And I said: At any time.

24 And Mr. Radbil said: We did, yes.

25 And I said: What was the figure?

1 And then he goes back to: I believe we
2 gave their client a pre-suit demand. I believe it
3 was -- I don't remember the exact figure, but the
4 letters I saved, it was under \$10,000. That was a
5 pre-suit demand.

6 And then you said, Mr. Meyers, you stood
7 up and said you could present the Court a
8 chronology.

9 And then Ms. Malone, I asked her to
10 clarify, and she referred the Court to, I believe it
11 was, Tab Number 10, an e-mail from Mr. Kurz in
12 September of 2011. The E-mail indicates a demand
13 was requested by defense counsel.

14 And Mr. Kurz wrote: Robbie you had asked
15 me for a demand in this case -- and this is
16 September 9, 2011 -- given our initial pre-lit
17 demand had expired. As this case is now in
18 litigation, we have no demand at this time.

19 And again, without getting into all of the
20 back and forth: Mr. Radbil, prior to the mediated
21 settlement conference, you personally made no
22 settlement demand on Ms. Malone, was her question.

23 And he said: Did I personally communicate
24 them?

25 And she said: Yes.

1 And he said: Our firm did.

2 Then it goes on and on and on, and it
3 turns out there was no demand. And so there was
4 this issue with Mr. Radbil starting off this whole
5 line of questioning with didn't understand the logic
6 of going to trial after summary judgment when, in
7 fact, no demand had been made. And that is
8 substantiated in the first transcript of the first
9 hearing.

10 So I just want that to be clear, because I
11 think so much of this just goes in circles, and I
12 want to get back to the truth of what actually
13 happened.

14 All right. Mr. Meyers, let's go ahead.

15 MR. MEYERS: Thank you, Your Honor.

16 Q. (By Mr. Meyers) I can only speak -- strike
17 that.

18 A. I can answer what you're getting towards about
19 an 8,500-dollar settlement demand. No demand was
20 ever -- no settlement offer was made to me
21 personally. And the one you are referring to,
22 Ms. Malone does not have recollection of receiving
23 it.

24 Q. Okay. But you know the one I'm referring to.
25 It's attached to Mr. Kurz' affidavit, document 142,

1 from January 5th, 2012?

2 A. I can't recall it, but I know through all of
3 these proceedings there has been discussion of the
4 8,500-dollar settlement.

5 THE COURT: So let's clear up this point.
6 In a nutshell, what does Mr. Kurz's affidavit say
7 with regard to the demand? What and when and how
8 much?

9 MR. MEYERS: As a matter of regular
10 business practice, he saves e-mails.

11 On January 5th, on behalf of Timothy
12 White, I made an 8,500-dollar demand to counsel for
13 Regional Adjustment Bureau, Inc., via e-mail.

14 THE COURT: January 5, 2012.

15 MR. MEYERS: 2012.

16 THE COURT: All right.

17 MR. MEYERS: So the chronology, Your
18 Honor, would be two pre-litigation letters, offer of
19 judgment -- or perhaps what's your demand, no
20 demand, offer of judgment \$8,500.

21 THE COURT: Ms. Malone, if you could just
22 clarify the testimony on this so far, because it
23 seems inconsistent with what Mr. Kurz has just said
24 to have been said by Mr. Meyers.

25 MS. MALONE: Your Honor, I don't remember

1 receiving a demand. But to be honest, Your Honor,
2 if they want to say they sent us an 8,500-dollar
3 demand, it actually goes to our point to prove that
4 their damages stuff is worse. Because that demand,
5 by the date that he is saying, would have been after
6 Dr. White's his deposition, which would have meant
7 that someone in their firm valued the case at
8 \$8,500.

9 There is one thing that I think was sort
10 of glossed over, and I'm sure Mr. Meyers will
11 correct it. After summary judgment, Mr. Meyers
12 reached out to me and said he wanted \$65,000. Then
13 after they got the damages memo from their client at
14 the mediated settlement conference where the damages
15 memo talked about, I assume, the \$45,000, then
16 Mr. Radbil's demand at the mediated settlement
17 conference was never below \$100,000.

18 So I don't remember the \$8,500. If he
19 wants me to say there was one, it actually hurts
20 their argument more on the damages side. So I will
21 say, Judge, okay, I don't remember it, but it
22 actually proves our point that they did tell their
23 client the \$45,000 would be admissible.

24 THE COURT: The mediated settlement
25 conference took place in late fall of 2012.

1 MS. MALONE: No, ma'am. The mediated
2 settlement conference took place a couple of weeks
3 before trial. I believe that it was early February.

4 THE COURT: 2013.

5 MS. MALONE: Yes.

6 THE COURT: Let's go, Mr. Meyers, please.

7 MR. MEYERS: Thank you.

8 Q. (By Mr. Meyers) In your experience, have you
9 seen clients waiver between settling high, settling
10 low, wanting to litigate?

11 A. Yeah, it happens.

12 Q. In your experience, there are times in the
13 course of a case that one may want to flesh out some
14 evidence and get an understanding of the case prior
15 to engaging in settlement discussions. Is that
16 true?

17 A. Are you referring to discovery or
18 pre-litigation or . . .

19 Q. Just times in a case.

20 A. Sure.

21 Q. There are times when judicial intervention is
22 required to get a party to supplement discovery,
23 right?

24 A. Yes.

25 Q. If Dr. White did not want \$1,000 at any point

1 in the litigation, would continuing with the
2 litigation be vexatious?

3 A. I can't really answer that question the way
4 it's asked, because it goes to our argument
5 regarding it being an offer of judgment.

6 Q. In paragraph 24 of your motion for Rule 37
7 sanctions, which is document 120, you state:
8 Focusing on the statutory damages hypothetically, if
9 any client of Weisberg & Meyers recovers the maximum
10 amount of statutory damages and nothing for actual
11 damages, Weisberg & Meyers can deduct filing fees of
12 \$370 in federal court, the cost of taking one
13 deposition and the cost of one original transcript,
14 and the client's 1,000-dollar recovery is gone. Do
15 you recall that?

16 A. Sure.

17 Q. Any evidence that my firm has ever done that?

18 A. Any information about that is protected, so I
19 would not have access to it. As it says,
20 hypothetically.

21 Q. Okay. And in paragraph 25, on page 13 you
22 continue: The greed is vastly evident in the three
23 ways Weisberg & Meyers attempts to recover its
24 attorney's fees from their own client if they aren't
25 obtained through litigation.

1 A. Okay.

2 Q. Do you have reason to believe that I have sued
3 more clients than the two lawsuits that I presented
4 to the Court because the Court asked me?

5 A. No.

6 Q. One of those lawsuits -- have you had the
7 opportunity to read them?

8 A. It's been a while.

9 Q. One of those lawsuits alleged that the
10 defendant sent the check to the client and the
11 client kept our attorney's fees and never paid us.
12 Do you recall that?

13 A. Yes.

14 Q. Do you think it was wrong for me to sue that
15 client?

16 THE COURT: Mr. Meyers, I just want you to
17 know that you have had him up here at least as long,
18 if not longer, than Ms. Malone did. And I'm going
19 to give you ten more minutes to finish up these
20 questions, because I can't just let you go all day
21 like I have done in the past. So make sure you pose
22 the questions that you want the answers to. Okay?

23 MR. MEYERS: Yes, Your Honor. Thank you.

24 A. The issue is not you going out and suing all
25 these clients. The issue is that your fee agreement

1 allows you to. Whether you exercise that option,
2 that's up to you, but it's in your fee agreement and
3 it allows you to do that.

4 Q. (By Mr. Meyers) So it's your position that an
5 attorney-client contract can't say to the client, if
6 you don't pay the bill, we have the right to sue
7 you. Is that right?

8 A. Depends on the contract.

9 Q. Okay. In the exhibit book, your exhibit book,
10 included are orders to show cause in the case of
11 Little-Cadman, Paris, and Saunders.

12 A. Correct.

13 Q. Were those -- I'm not asking you anything about
14 privileged communications.

15 A. Okay.

16 Q. Did you research those cases to find those
17 orders yourself?

18 A. Could you repeat the cases?

19 THE COURT: Can you give us the exhibit
20 numbers you're referring to?

21 MR. MEYERS: Yes, Your Honor.

22 I'm having trouble finding my exhibit
23 list, Your Honor, I'm sorry.

24 THE COURT: Well, Exhibit Number 21 is the
25 Little-Cadman case. And what was the other one you

1 were looking for?

2 MR. MEYERS: Paris.

3 THE COURT: Harris?

4 MR. MEYERS: Paris. P-A-R-I-S.

5 A. Paris is Exhibit 20, and Ivy Little-Cadman is
6 Exhibit 21, and Saunders is Exhibit 28.

7 Q. (By Mr. Meyers) Did you have the opportunity,
8 Mr. Martin, to research and find those cases
9 yourself?

10 THE COURT: I'm not sure what difference
11 that makes, and you're running out of time. So
12 let's ask another question about the point that
13 you're making with this.

14 MR. MEYERS: Yes, Your Honor.

15 Q. (By Mr. Meyers) I'm curious why those orders
16 were included without the corresponding orders
17 discharging the order to show cause in each case.

18 A. Because it shows misrepresentations to the
19 Court. In these orders, the Court believes there
20 are misrepresentations.

21 Q. And do you think after a hearing on those cases
22 that the Court still felt there were
23 misrepresentations and just decided not to sanction
24 us?

25 A. Yes.

1 Q. So you think the Court would find

2 misrepresentations and decide not to sanction?

3 A. It's possible. In discovery disputes, the
4 rules allow sanctions to be levied based on the
5 court's orders. The courts do not often award
6 discovery sanctions in motions to compel.

7 Q. But those were not orders on motions to compel,
8 were they?

9 A. No.

10 MR. MEYERS: Okay. I just have a few more
11 questions, Your Honor, given the Court's timeline,
12 just a few more questions.

13 Q. (By Mr. Meyers) As a general proposition,
14 Mr. Martin, if a client has made it clear to a
15 lawyer that a particular proposal for settlement
16 would be unacceptable to the client, do you think
17 that the lawyer still has a duty to convey that
18 unacceptable proposal?

19 A. It might depend.

20 Q. In the case of Whatley v. AHF --

21 A. Yes.

22 Q. -- your firm won that case on summary judgment.
23 And did it ask for something in the neighborhood of
24 \$120,000 in attorney's fees and sanctions?

25 A. It's possible. I'm not sure what the number

1 is, but we did seek our attorney's fees.

2 Q. And that court denied your motion?

3 A. Correct.

4 Q. Do you recall reading that order?

5 A. A little bit.

6 Q. Or those orders I should say. There is
7 Exhibit 15 to my book, Mr. Martin.

8 THE COURT: This will be your last
9 question, Mr. Meyers.

10 MR. MEYERS: Okay.

11 MS. MALONE: Exhibit 15?

12 MR. MEYERS: Yes.

13 THE COURT: Whose Exhibit 15?

14 MR. MEYERS: Mine, Your Honor. And Your
15 Honor, did you mean the last few minutes of the line
16 of questioning?

17 THE COURT: This is the last area I'm
18 going to allow you to ask a question.

19 MR. MEYERS: So that's maybe three or four
20 short questions?

21 THE COURT: If you want to spend your time
22 on this, that's fine, but that's all you're going to
23 get.

24 MR. MEYERS: Yes.

25 A. Exhibit 15.

1 Q. (By Mr. Meyers) Okay. You had the opportunity
2 to object to the magistrate judge's findings in both
3 orders, did you not?

4 A. To tell you the truth, when the docket was
5 closed on this case after the liability was
6 determined, the ECF notifications actually stopped
7 being sent out. And so we actually discovered the
8 orders after the 15 days.

9 Q. You discovered the orders after the 15 days.
10 Okay.

11 Did you move to ask the Court for leave, given
12 that you didn't get ECFs to file a late objection?

13 A. I believe our client didn't want to proceed.

14 THE COURT: Mr. Meyers, that will be it.
15 You can take a seat. We're going to break.

16 Before we do, I have one clarification to
17 make, if you will take a seat, please, and
18 Mr. Martin you can step down. I don't need any more
19 from Mr. Martin.

20 Just because this testimony and this
21 evidence seems to go in circles, Mr. Meyers, with
22 all due respect, especially when you are up there, I
23 just want to talk about these two, three orders that
24 you say were sanctions, show cause orders by the
25 courts that were discharged, so that it doesn't

1 leave a false impression about the severity of these
2 orders.

3 The first one is 20. And this is a show
4 cause order by a district court in Seattle. And
5 it's talking about Mr. Radbil filing a third
6 application for pro hac vice.

7 The Court says: The Court finds the
8 plaintiff's third application again fails for
9 misrepresenting information to the Court. While
10 Mr. Robbins was the one who filed the application
11 through the Court's electronic filing system, the
12 application is signed by Matthew Cunanan as local
13 counsel. In reviewing the application, Mr. Cunanan
14 does not provide his correct bar number. Instead,
15 Mr. Cunanan provides Mr. Trigsted's bar number --
16 and she's goes into the address. Considering this
17 is the third time plaintiff has failed to properly
18 file an application for pro hac vice, the Court will
19 not take this misinformation lightly.

20 The second order is also out of the
21 Washington court. I believe it's by a different
22 judge -- is it the same judge --

23 MR. MEYERS: It is a different judge, Your
24 Honor.

25 THE COURT: All right. Different judge --

1 on the same issue dealing with the pro hac vice
2 filings. All of this leaves us with a case filed by
3 a plaintiff who has three attorneys, none of whom is
4 eligible to practice in this district and all of
5 whom have been on notice of this fact since at least
6 August the 19th. And this was October.

7 Mr. Trigsted now seeks leave to withdraw. This ship
8 may be sinking, but Mr. Trigsted will not be
9 permitted to flee just yet . . . show cause why
10 Messrs. Robbins, Radbil, and Trigsted should not be
11 sanctioned for their misrepresentations to the
12 Court.

13 And then, finally, 28 I think was the next
14 one where it was discharged, Mr. Meyers, and I don't
15 have any reason to not believe you about that.

16 The Saunders case, which is by a district
17 judge in the Eastern District of New York: The
18 evidence in the record before me suggests that
19 plaintiff may have engaged in a game of cat and
20 mouse with first as creditor and then as collection
21 company obscuring his identity so that there was no
22 way the -- the collection company could know with
23 whom he was dealing. And it goes on and on about
24 Rule 11 sanctions.

25 So I want to be clear that these orders

1 have some very serious language in them by the
2 courts that wrote them, it's not a motion by
3 counsel.

4 We're going to break for an hour and 15
5 minutes, and then I want to finish up with whatever
6 last witnesses there are and put this case to bed so
7 the Court can do an order.

8 We will be in recess until 1:45.

9 (Recess taken from 12:30 to 1:45.)

10 THE COURT: And we are where exactly,
11 Ms. Malone?

12 MS. MALONE: I was about to take the
13 stand, Your Honor, for the end of our side.

14 THE COURT: Okay. And is Mr. Martin going
15 to question you?

16 MS. MALONE: Yes, ma'am.

17 THE COURT: Mr. Radbil, did you have
18 something?

19 MR. RADBIL: No. I didn't hear if you
20 said we could be seated.

21 THE COURT: Yes, that's fine.

22 Ms. Malone, if you will raise your right
23 hand.

24

25

1 **ROBBIE MALONE,**
2 **having been first duly sworn, testified as follows:**

3 THE WITNESS: Yes.

4 **DIRECT EXAMINATION**

5 Q. (By Mr. Martin) All right. Ms. Malone, could
6 you please identify yourself to the Court?

7 A. My name is Robbie Malone.

8 Q. Okay. And could you tell us about your
9 experience and what you do?

10 A. I graduated from law school in 1986 and was
11 licensed the same year. Prior to being licensed, I
12 worked on a third year bar card with the Brazos
13 County County Attorney's Office. I was a state
14 court prosecutor there.

15 I worked for the State of Texas with, first,
16 the General Counsel's Office for Texas A&M and then
17 in the Medical Malpractice Division at the Attorney
18 General's Office in Austin until I went into private
19 practice roughly 20 years ago. And then, since that
20 time I have been a partner or had my own firm in
21 private practice pretty much the whole time.

22 Q. Have you tried cases as lead counsel other than
23 this one?

24 A. Yeah.

25 Q. Could you estimate maybe how many cases you

1 have tried as lead counsel?

2 A. I can't. I tried a ton of cases as a
3 prosecutor. And in the old days, back when I
4 started practicing 20 years ago, 27 years ago, we
5 tried a lot more cases. So I have tried hundreds of
6 cases, to be honest with you.

7 Q. So you own your own firm now, correct?

8 A. Right.

9 Q. What's your prior, I guess, private practice
10 experience before owning your own firm?

11 A. Well, I think the point that you're going to is
12 that I was a partner in a bigger firm called
13 Hiersche, Hayward, here in the Dallas area. There
14 were about -- we had about 50 people then, I don't
15 know what their staffing is now. I was a partner
16 with that firm for some period of time.

17 Then I joined Mike Bean, who was also an
18 insurance defense attorney in town, and we had our
19 own firm for a while. And when he went in-house
20 with his client, I chose to stay without a partner
21 at that time. And that was probably six years ago,
22 something like that.

23 Q. We sort of glossed over this a hair, but what
24 types of cases have you handled?

25 A. I started off -- if you get past the criminal

1 experience, when I worked for the State, I did
2 everything from Tort Claims Act to tenure EEOC
3 violations.

4 When I went into the med-mal division, I
5 obviously specialized in medical malpractice
6 defense, predominantly representing state hospitals
7 and doctors and nurses who were employed by the
8 State of Texas at various facilities and
9 psychological folks.

10 During the course of that, I sort of developed
11 an expertise in doing psychology malpractice
12 defense. So when I first came into private
13 practice, I would say probably 60 percent of my
14 cases were in the field of psychology malpractice
15 defense, but I globally sort of handled any kind of
16 malpractice. I have represented lawyers, I have
17 represented accountants, I have represented
18 insurance agents, insurance adjusters, people who
19 develop software, anything you can get sued for on a
20 professional basis.

21 Somewhere around, I want to say, 12 years ago,
22 I started being assigned, through the insurance
23 companies, debt collection agency cases. And that
24 practice has gone up and down, depending on the
25 types of suits that are filed. I have never done

1 just one type of work.

2 Q. Okay. And you talk about being a member of
3 Hiersche, Hayward. What was your position there?

4 A. I was a partner. Officially we were called
5 members, but I was a partner.

6 Q. And while you were there, did they provide --
7 or did you provide any training towards associates?

8 A. Sure. I had -- because I had the most trial
9 experience, sometimes in civil firms --

10 THE COURT: Slow down just a little bit.
11 All right?

12 A. Sometimes in civil firms, there are not as many
13 lawyers who have tried cases. So if you have trial
14 experience, you tend to get the responsibility of
15 training young lawyers to try cases, to handle
16 depositions, to go through hearings.

17 It sort of fell upon me, if we had a new
18 associate. I usually had six to seven associates in
19 those days who worked directly for me. This was
20 before tort reform, and we had a lot more med-mal
21 then.

22 I would also help out in other areas. And if
23 there was a young lawyer who had trouble taking
24 depositions or was struggling with hearings, then I
25 would work with that particular person. I did

1 everything from attending hearings with them and
2 giving them pointers, to reading transcripts after
3 they had done it and giving them advice; going to
4 depositions, letting them tag along with me; getting
5 them to do different parts of the trial so that they
6 would be able to handle one when it came their time
7 to do it.

8 Q. And you briefly mentioned trial at the end.
9 You had also supervised with trials. Could you
10 elaborate just a little bit on that?

11 A. Sure. I almost always, even today, if I can, I
12 try to bring a second chair with me to trial.
13 Sometimes my clients won't pay for it, so they just
14 come along for the learning experience. I think
15 that the best thing that a young lawyer can do is
16 come into the courtroom and try things.

17 So, for example, with the case of any associate
18 I have brought, I assign them some responsibility in
19 the trial that they are the ones to do that. It
20 might be they argue the motion in limine. I usually
21 will give them one witness, I work with them on the
22 development of that, and they work with me on how to
23 prep a case.

24 And so I try to get them more and more involved
25 as their development goes so that they are able to

1 try a case hopefully some day on their own.

2 Q. Do you do the same similar training with your
3 own firm today?

4 A. Yes, I do. I think you have come to a lot of
5 stuff with me, and I have seen you.

6 Q. And could you also describe a little bit of the
7 supervision you provide on a daily basis with your
8 own firm?

9 A. Sure. We have -- typically, at any given time,
10 we have some young lawyers who are a little more
11 experienced than others, so it's kind of a joint
12 thing.

13 As an attorney becomes more experienced, I get
14 them to help in the supervision of the younger
15 lawyers, because I think that's part of the learning
16 process, is to teach each other how to do things.

17 I read motions that are drafted. I'll be
18 honest, I don't draft as many motions, probably not
19 very many anymore because they are time consuming
20 and are usually better suited for someone who can
21 devote the time to write them without being
22 interrupted. So we will assign a task to someone,
23 and then, as the attorney who has drafted the
24 motion, I often let them have the opportunity to
25 argue it, and I will go with them.

1 In the case of certain kinds of discovery
2 motions, I, for example, have assigned you to go
3 with -- we have a younger lawyer now, Mr. Jones, to
4 go and watch him do his hearings and make sure that
5 he knows how to do it.

6 If there is ever a question about what happens,
7 I order the transcript. Specifically with a case
8 with you, there was a visiting judge that did a
9 strange thing. I ordered the transcript and I read
10 it to see if we could figure out what happened in
11 the hearing and how it could have been handled
12 differently, because there was kind of an odd ruling
13 there, not really relevant to the case. But it was
14 about training, to make sure you could move to the
15 next level.

16 Q. All right. And turning towards this case a
17 little bit, have you represented Regional Adjustment
18 Bureau before?

19 A. Yes.

20 Q. Okay. How did those cases go?

21 A. Regional Adjustment Bureau is one of my clients
22 that, whenever I would get an assignment from them,
23 typically within the first 60 days we would settle
24 the case. This is the only one where we went beyond
25 60 days that I remember. There may be one that went

1 90, but nothing longer than that.

2 Q. So can you briefly -- and I know we have been
3 over it quite a bit, but briefly describe what
4 happened at the outset of this case.

5 A. When the case was first assigned to me from the
6 insurance company, there is a standing report that
7 we have to fill out. And one of the questions is,
8 have you reached out to opposing counsel to find out
9 what their demand is? And anyone who does insurance
10 defense work knows that that's a standing question.

11 So I almost always, when I get a new case, even
12 if I don't have the formal report requirement yet, I
13 almost always send an e-mail to the opposing side
14 and say, hey, I just got this, tell me what you're
15 looking for, because that's one of the factors that
16 goes into valuation and strategy of handling the
17 case.

18 I did that in this case and got an e-mail back
19 from Mr. Kurz saying they were not able to respond
20 at this time.

21 Q. Okay. And did you do anything in response to
22 that for your client?

23 A. Yes. We filed an offer of judgment to try to
24 push the issue towards resolution early in the case.

25 Q. What was the amount of that offer of judgment?

1 A. It was \$1,000 plus attorney's fees. I don't
2 think it listed court costs, but it was \$1,000 plus
3 attorney's fees to be determined by the Court.

4 Q. All right. And so then, in this case, we
5 received initial disclosures. Do you recall those
6 initial disclosures?

7 A. I do.

8 Q. Let me back up one second. Did you receive a
9 response to that offer of judgment?

10 A. I did not -- well, you're right, I did not to
11 the offer of judgment. I had received a prior offer
12 saying they weren't going to make an offer.

13 THE COURT: When would this have been,
14 Ms. Malone, that you got notification that there
15 wouldn't be an offer?

16 THE WITNESS: I think it would have been
17 September the 9th, 2011. That was Exhibit 10 for
18 Regional Adjustment Bureau. That was the e-mail
19 from Mr. Kurz.

20 THE COURT: Thank you.

21 Q. (By Mr. Martin) And then the offer of judgment
22 occurred after this.

23 A. Yes.

24 Q. Back to the initial disclosures. Did you
25 receive an initial disclosure for Dr. White on

1 damages?

2 A. Yes, I did.

3 Q. Do you recall what that initial disclosure
4 stated?

5 A. It was \$1,500. There was other language, but
6 the amount for actual damages was \$1,500. I think
7 they also mentioned statutory damages and attorney's
8 fees.

9 Q. Did this \$1,500 ever change?

10 A. No.

11 Q. It didn't change at any point throughout the
12 litigation?

13 A. No.

14 Q. How did you use this number in your case
15 valuation?

16 A. Well, it does a lot of things. The
17 determination of what actual damages are -- for
18 example, a 1,500-dollar actual damage claim will not
19 warrant me to go out and order somebody's medical
20 records, because the cost of medical records can be
21 anywhere from \$1,000 to \$2,000 or more, depending on
22 the length of treatment. So if I get an actual
23 damage claim for \$1,500, I'm not going to pay to get
24 that plaintiff's medical records because they are
25 not going to -- that number is pretty good. I'm

1 going to live with that 1,500-dollar number.

2 Q. Okay. And did this number not changing
3 multiply the proceedings in this case?

4 A. In my opinion, it did.

5 Q. Could you describe how you believe that
6 extended that?

7 A. Well, several things: It affected our
8 evaluation of the case. So when we go, for example,
9 through the settlement conference, we're looking at
10 \$1,500 as the maximum they can recover for actual
11 damages. We're getting, from Judge Stickney,
12 demands of over \$100,000, and we're saying, how can
13 they prove actual damages? And we are asking
14 questions about it, and they just don't add up.

15 And so I'm pretty sure that if they have some
16 claim for actual damages that's above \$1,500, it's
17 not going to be admissible at trial. I was never
18 told what their allegations were, what their alleged
19 damages were, but the number I was getting implied
20 to me that something else was going on in the case
21 that I was not aware of. And it certainly affected
22 the ability to settle the case.

23 Q. You never received medical records or discovery
24 responses to reflect any increase in damages?

25 A. No.

1 Q. And so at trial, what happened regarding
2 damages?

3 A. Dr. White was testifying on the stand, and
4 there were two things he said that caught my -- that
5 caught me completely off guard, and I did not
6 object -- I didn't object at the time.

7 He said that he had been damaged to the tune of
8 \$40,000 related to interest and penalties and other
9 fees that were associated with the student loan,
10 which was the underlying debt in question.

11 And then he testified later that he had lost a
12 contract position at the -- a teaching position at
13 the school for \$5,000. I did question him about
14 that and got him to admit that that was not
15 something he had relayed in his deposition.

16 Then Mr. Radbil had asked him some question
17 related to whether or not he had -- I may have this
18 chronology wrong. I think the 5,000 came first, and
19 I think the 40,000 came later.

20 THE COURT: Ms. Malone, just to be clear,
21 this is what happened at trial.

22 MS. MALONE: Yes, ma'am.

23 A. I think the 40,000 actually may have come later
24 during the course of Dr. White's testimony. But he
25 then said -- Mr. Radbil asked him a question about

1 counseling, and I objected on a Rule 37 motion, and
2 we went to the Court and I pointed out that
3 Dr. White had said he had never seen a counselor and
4 that was the responses to our discovery.

5 Later, in the Rule 37 motion hearing at the
6 close of trial that day, Mr. Radbil tried to suggest
7 that making an appointment for a counselor is
8 seeking counseling, which I don't think at all is
9 the case. But the Court did keep out the actual
10 counseling testimony from going to the jury.

11 Q. And then referring to counseling, have you
12 received an exhibit in these proceedings that
13 reflected that he did seek counseling or obtained
14 counseling?

15 A. There was -- there was some sort of reference
16 to a memo from December 28th about some sort of
17 medical records, but I'm not really sure who it was
18 for or any more detail than that.

19 Q. No medical records were produced in this case;
20 is that correct?

21 A. That's correct.

22 Q. And no discovery response was supplemented to
23 state anything that he had been receiving or seeking
24 counseling?

25 A. That's correct.

1 Q. And so now what we just described at trial, did
2 that cause you surprise?

3 A. Oh, absolutely.

4 Q. And your client surprise, as well?

5 A. Sure, because we had thought our actual damage
6 number maximum was going to be \$1,500, and now we
7 are hearing about \$45,000 of hard damages.

8 Q. Further, did this prejudice you and your
9 client?

10 A. Well, as it turned out the jury ruled in our
11 favor, so it didn't. But it certainly did in the
12 way we were handling the case at that time.

13 Q. And so it did expose your client to harm that
14 you didn't anticipate?

15 A. Well, because the jury ultimately came in our
16 favor, I can't say that it -- that there was
17 long-lasting harm on the issue. It certainly was a
18 problem in trial.

19 Q. Okay. And these issues have caused detriment
20 to your client ongoing from that date regarding
21 these motions, these proceedings, and it's costing
22 your client money as we speak, correct?

23 MR. JEFFERSON: Objection, leading and
24 compound.

25 THE COURT: Sustained. Rephrase it.

1 Q. (By Mr. Martin) This has caused detriment to
2 your client, correct?

3 A. Sure. Since that time, we have had motions --
4 and I guess we are in our fourth day of hearing --
5 in preparation related to those that my client has
6 been paying for.

7 Q. Okay. Now I'm going to discuss another issue
8 in this case. There was an issue regarding experts,
9 correct?

10 A. Yes.

11 Q. Did anything in this case make you believe that
12 an expert would be needed for the plaintiff's case
13 in chief?

14 A. Yes.

15 Q. Okay. What would that have been?

16 A. Well, there were a couple of things. There had
17 been a suggestion at some point that their client's
18 preexisting medical condition, which was ankylosing
19 spondylitis, was somehow aggravated by this, but
20 there had never been anything to substantiate that.

21 And then we saw two names of doctors that
22 showed up in disclosures, I think in response to a
23 question about who his treating physicians were,
24 that were related to that treatment.

25 Towards the last couple of days before trial, I

1 received a call from an attorney, who is an old
2 friend of mine, a med-mal defense attorney, who
3 represented one of the doctors and was calling
4 because his client received a subpoena for this
5 trial.

6 And his client doctor wanted to know if the
7 case was really going on, and he wanted to know what
8 the case was about and what the testimony would be
9 about. And certainly I -- I think I told him that I
10 didn't know he had been subpoenaed, and I think I
11 may have provided him with Mr. Radbil's cell phone
12 number so he could talk to him directly. I don't
13 know if they ever spoke.

14 THE COURT: Slow, slow, slow down a little
15 bit.

16 A. I don't know if they ever actually spoke,
17 though.

18 Q. (By Mr. Martin) And I guess there are two
19 issues a little bit intertwined with this, being
20 experts and then also witnesses. Was there a number
21 of witnesses disclosed in this case by plaintiff?

22 A. There were a number of witnesses that were
23 disclosed late in January, long after the discovery
24 cutoff. On the eve of trial, there were a whole
25 bunch of new -- I think it was six new witnesses

1 that we had never been told about. So we had to
2 file motions to complain about their potential at
3 trial. Some of them were actually subpoenaed and
4 showed up in the courtroom.

5 Q. Okay. And you mentioned that you filed some
6 motions. So you took action to protect your client
7 based on this, correct?

8 A. Sure. I can't give you all of the names of the
9 motions. I think there was a motion to strike late
10 designated expert. I think there was probably a
11 motion to strike undisclosed witness -- I don't know
12 the exact title. I could look in the sheets and
13 find it for you.

14 Q. Okay. And each of these pleadings cost your
15 client money, correct?

16 A. Yes.

17 Q. And do you believe that filing these pleadings
18 were reasonable?

19 A. I don't think I had a choice. I think if I had
20 not objected to these witnesses, that would have
21 been probably malpractice on my part.

22 Q. And so you believe they were necessary in these
23 proceedings?

24 A. Yes, absolutely.

25 Q. And moving on, you also mentioned the issue of

1 subpoenas. Plaintiff's counsel issued trial
2 subpoenas on various people, correct?

3 A. Yes.

4 Q. And was it your opinion that one of these
5 people could have been an expert witness?

6 A. One of the doctors, the medical doctor, I think
7 it was Dr. Betancourt who called me, yes.

8 Q. All right. To rephrase, you believe that one
9 of these witnesses might have been providing expert
10 testimony?

11 A. Yes, because, one, I knew what their profession
12 was. The second thing was, we had attorney fee
13 invoices from the firm, and there were two -- there
14 were several references in -- by the firm, I mean
15 Weisberg & Meyers. There were references from
16 paralegals in their law firm about communications
17 with experts and letters to experts to confirm their
18 availability for trial.

19 Q. Okay. And so dealing with these, it cost your
20 client money, basically, in the means of attorney's
21 fees?

22 A. Yes, absolutely.

23 Q. And so then another issue in this case dealt
24 with exchange of exhibits before trial, correct?

25 A. Yes.

1 Q. We had talked about how there was a deadline to
2 submit exhibits to the Court, correct?

3 A. Right.

4 Q. And there was also a requirement to confer with
5 opposing counsel regarding what exhibits would be
6 used at trial, correct?

7 A. Yes.

8 Q. Could you, I guess, describe to the Court what
9 you did to comply with this Court order?

10 A. There was actually two parts to that. The
11 original scheduling order had passed, so we had to
12 have some new dates. The Court adopted the dates
13 proposed by the plaintiff. And my recollection was
14 that it was a February 15th date that we were
15 supposed to exchange hard copy exhibits.

16 And the Court's order required that you would
17 also have a description explaining why the document
18 would be admissible and warned that, if you didn't
19 have this, the Court may not accept it at trial.

20 So prior to February 15th, like the 12th or
21 13th, something like that, I actually had those
22 copies hand-delivered -- FedExed to -- certified
23 mailed to the firm, and I may be wrong it may be
24 FedEx, but we gave them the tracking number. And I
25 didn't receive the exhibits back from

1 Weisberg & Meyers.

2 So I think the 15th must have been like a
3 Thursday, because it wasn't until the 19th that I
4 got any real communication from them. I was --
5 e-mailed Mr. Radbil and asked him where my exhibits
6 were. Then I started getting these bizarre faxes,
7 which I think I now understand why they were the way
8 they were, but they were pixels that covered half
9 the page.

10 I have subsequently learned from Mr. Weisberg
11 (sic) that there may have been a glitch in their
12 faxing program. But at the time, I didn't know what
13 they were, I just knew that they were not complete.
14 I kept saying, these are not complete, send me new
15 documents. I couldn't get anywhere with that.

16 And we were supposed to submit hard copy
17 binders with tabs to the Court by the 20th; I did
18 that, we had ours hand-delivered. And I think that
19 Judge Boyle issued an order on the Friday before
20 trial saying, okay, guys, I want you to talk about
21 these exhibits, and I mean it, try to work out what
22 you can do, or words to that effect.

23 So that Friday evening when I got the order, I
24 started calling Mr. Radbil. He never returned my
25 call on Friday evening. So Saturday I called him

1 and e-mailed him ten times each way and asked him to
2 set up a time so that we could talk about the
3 exhibits, and I never got a response from him at
4 all.

5 Sunday afternoon, I came home from church, and
6 I got a call from Mr. Radbil that he wanted to talk
7 about exhibits that afternoon. No apology for not
8 returning a courtesy call or at least telling me,
9 you know, I can't talk now, but giving me an
10 alternate time, and then we spoke about exhibits.

11 I did agree with him that if he would just
12 bring me an actual copy of the exhibits to the
13 courtroom the next morning, I would not complain any
14 further about the fact that I didn't have hard copy
15 exhibits until we got to court, and he did bring
16 them to me that morning. I don't believe he brought
17 a copy that morning for Judge Boyle, though. I
18 didn't see him have one.

19 Q. Just to clarify one thing: You mentioned
20 Mr. Weisberg. Did Mr. Weisberg tell you about the
21 fax problem or was it --

22 A. I'm sorry. I said Mr. Weisberg, but it was
23 Mr. Meyers, I apologize.

24 Q. I wanted to clarify that.

25 A. In a subsequent, different issue, there was

1 something he faxed me and it had that weird pixel
2 thing. And I said something to him about it, and he
3 said, oh, it's the fax machine that's doing it. I
4 sure would have appreciated knowing it was the fax
5 program. I went, oh, that explains why these
6 exhibits had these weird pixels and were not
7 legible. I wish I would have known that, I probably
8 would not have been quite as miffed at Mr. Radbil at
9 the time as I was.

10 THE COURT: He being Mr. Radbil or
11 Mr. Meyers.

12 A. Mr. Meyers explained to me there was some sort
13 of programming problem with his fax program. I
14 don't know exactly what it was. Our fax machine at
15 work is more of the old, traditional style. But I
16 do take his explanation, and that would definitely
17 explain why it was strange. And it was unrelated to
18 these exhibits, though, and it was way later.

19 Q. (By Mr. Martin) And so you described having to
20 go in the office Saturday and also dealing with this
21 Sunday. Those are outside of your normal business
22 hours, correct?

23 A. Sure.

24 Q. And working this time on the exhibits, dealing
25 with attempts to confer, cost your client extra

1 money, correct?

2 A. It did. I never did get the required
3 statement.

4 Oh, and the other thing is that Mr. Radbil was
5 complaining that he had not received his hard copy
6 of the exhibits. I still don't what happened, but
7 he admitted his office received them. But at some
8 point I actually scanned them in and sent them in
9 myself on Saturday afternoon just so that would not
10 be an argument he had, because apparently his office
11 didn't scan them in for him. I never did understand
12 the problem, to be honest with you.

13 Q. So dealing with the issues with these exhibits,
14 did that cost your client excess fees that should
15 not have been incurred?

16 A. Yes.

17 Q. Okay.

18 A. And it messed up my Saturday afternoon, I've
19 got to be honest with you.

20 Q. All right. Diverting back to our Rule 37
21 Motion for Sanctions and 28 U.S.C. 1927 Motion for
22 Sanctions, have you estimated costs that this --
23 that were incurred to your client?

24 A. Sure. We actually went through the exhibits --
25 I mean the fees, which are in Exhibit 41, and that

1 goes through the end of August. And we had not done
2 the September bills at the time, at the last thing,
3 but I did review the September and October bills --
4 I don't think we've included November -- but to come
5 up with calculations. On the Rule 37 for drafting
6 the motion --

7 Q. Let me cut you off for just a second.

8 A. Okay.

9 Q. I would like to kind of go over the Johnson
10 factors that go into attorney's fees.

11 A. Yes.

12 Q. Are you familiar with Johnson v. Georgia
13 Highway Express case?

14 A. Yes, Fifth Circuit.

15 Q. And are you familiar that that case enumerated
16 various factors that go into the reasonableness and
17 necessity of attorney's fees?

18 A. I am.

19 Q. I would like to walk through those factors with
20 you.

21 Are you familiar with time and labor required?

22 A. Yes.

23 Q. How would you go towards how that applied in
24 this case in your fees?

25 A. In this particular case, we looked at the --

1 for the Rule 37 motion, we looked at the specific
2 motions, et cetera, that we had to draft related to
3 that to the extent that they weren't intertwined and
4 just looked at those numbers completely. I think
5 that the Court had already said our rates were
6 reasonable, so we focused more on the hours that
7 were done.

8 Q. Okay. What about novelty and difficulty of the
9 issues?

10 A. On the Rule 37 motion, I think we've already
11 talked about this, I have never in almost -- I guess
12 I am now on my 28th year of practice, and I have
13 never had an attorney have this problem with the
14 Rule 37 in the middle of trial, where someone is
15 offering testimony that had never been supplemented
16 of the nature of damages like that. I had never
17 seen that before. I asked around and couldn't find
18 anyone else who did. So we didn't have a standard
19 motion like that, so it had to be drafted from
20 scratch, and we had to do appropriate research to
21 support those claims.

22 Q. And since we're also seeking all of our fees
23 from this case, could you also hit on that regarding
24 the entire case?

25 A. Sure. I think under 1927, the Court has the

1 right to use this as a punitive thing and recover
2 all fees for our clients. She also has the right
3 and the inherent authority to do that.

4 In my opinion, this case is very unusual
5 because of the conduct of the attorneys on the other
6 side and because of the unfortunate history of
7 sanctions motions, et cetera, and orders by other
8 courts, that this seems to be a pattern. So I think
9 it's unusual in that sense, and I would think it --
10 I don't think I will ever see a motion like this
11 again, to be honest with you.

12 Q. And moving into the next factor, could you
13 describe the required skill for this case?

14 A. I do think that we are -- we meet the required
15 skill level. I have tried a number of these. One
16 year, a couple of years ago, I tried six FDCPA debt
17 collection cases within one standard year. I don't
18 know where I am now, but I think I have probably
19 tried more than ten, less than 20 of just this type
20 of case. So I think we are certainly qualified to
21 do that. I think this is actually your third --
22 second or third trial on this.

23 Q. And moving on to the next factor, whether other
24 employment is precluded?

25 A. That's not a factor here. We get work from

1 clients routinely, whether I am trying one case or
2 not. To be honest, I have a pretty steady flow of
3 business, and that's not an issue here. I didn't
4 have to turn down any work because of working on
5 this case.

6 Q. And the next factor would be the customary fee
7 in a case like this.

8 A. I think that our insurance defense rates, as
9 proven up by Mr. Stevens, are below the customary
10 hourly rates for Texas in general and below the
11 Dallas rate. They are probably consistent with what
12 most insurance defense attorneys are able to charge.
13 They have subsequently raised our rate, because
14 apparently we were low for the Dallas area for
15 insurance defense attorneys.

16 THE COURT: What's your hourly rate?

17 MS. MALONE: As of this month, Your Honor,
18 it's gone up to 200, but it was 175 through the bulk
19 of the case. And for partners, I think it was 140,
20 and for associates, and it's gone up to 160; and 85
21 for paralegals, gone up to 90; and that would be the
22 same for the law clerks.

23 THE COURT: A lot different from the six-
24 and 700 I have seen.

25 MS. MALONE: Insurance defense lawyers are

1 paid pretty cheaply, Judge.

2 Q. (By Mr. Martin) You didn't request this fee
3 increase from your insurance carrier.

4 A. No; usually you have to beg them to give you
5 even five dollars more. I think that they did a
6 review of their panel counsel, and based on the fact
7 that we have done good work for them -- and I have
8 been on their panel counsel list for CHUBB now at
9 least 15 years -- they decided I needed a raise. I
10 was actually kind of surprised, but happy.

11 Q. Would you recall that this rate increased at
12 the beginning of September?

13 A. The rate increased at the beginning of
14 September?

15 Q. Right.

16 A. Okay. I know it was this fall, but I wouldn't
17 remember the exact date.

18 Q. Moving on to the Johnson factors, the next
19 factor would be whether the fee is fixed or
20 contingent.

21 A. This is not a fixed fee case; it's an hourly
22 rate case.

23 Q. All right. And the next factor, could you
24 describe the time limitations in this case?

25 THE COURT: So it's not a fixed fee case.

1 THE WITNESS: You're right; it is not a
2 fixed fee case, it is an hourly rate case. And
3 there have been no -- other than the normal time
4 limitations put on us by the Court, there have been
5 no emergency situations from the client, no
6 injunctive hearings, nothing like that. So it's not
7 been a time-urgent problem created by the client.

8 Q. (By Mr. Martin) Moving on, could you hit on
9 the next factor of the amount involved and the
10 results obtained?

11 A. Well, I think the results obtained were very
12 good. On the defense side, sometimes we try cases
13 where we are trying what we call damages case. So
14 any time we can get a zero award for damages, we
15 consider that to be a successful trial.

16 The amount in controversy, I guess it depends
17 on how you value the case. We always value the case
18 on the 1,500-dollar amount, but apparently that was
19 not Dr. White's position nor his attorney's based on
20 what happened at the mediated settlement conference.

21 So if they are looking at 100,000-plus verdict,
22 then I think our fees are -- in any case, I think
23 our fees are good because of the fact that our
24 client won.

25 Q. Have you read case law that states that this is

1 usually the most important factor in the Johnson
2 cases?

3 A. Yes; success is the most important factor.

4 Q. Okay. And could you hit on the next factor of
5 the attorney's experience, reputation, and ability?

6 A. If it's talking about mine, I think that
7 certainly I have tried a number of cases for 28
8 years. I'm an AV rated attorney with
9 Martindale-Hubbell, something that I actually think
10 is earned.

11 I've -- I believe that I have a good reputation
12 in the community. I know I certainly do among the
13 lawyers that I regularly deal with, at least that I
14 have good relationships with every one of them for
15 the most part, with the exception of perhaps the
16 Weisberg & Meyers firm.

17 Q. To expand on this factor a little bit, could
18 you also describe, I guess, your associates' rates
19 with their experience and if you believe that's
20 justified?

21 A. Sure. In this particular case, I think the
22 majority of the associate work was conducted by
23 yourself. You are paid the associate rate, which I
24 believe was 140 to 160, given the raise. For a
25 second-year attorney in the Dallas area, that's low.

1 You, actually, for a young lawyer, are probably more
2 experienced than a lot of other lawyers. In my
3 opinion, you've already managed to take direct on a
4 couple of important witnesses in a trial which was
5 very successful for our client. You have conducted
6 a number of hearings that have done really well. I
7 think a lot of it has to do with the fact that you
8 sought out the ability to watch trials early on. So
9 while you are a young lawyer, a second-year lawyer,
10 I think you are probably much more experienced than
11 that.

12 Q. I have to say thank you.

13 And under that factor, as well, could you
14 describe that with a paralegal?

15 A. Our paralegal, Ms. Lewis, has been working for
16 us now, oh, for more than -- I think more than five
17 years. She is a certified paralegal who graduated
18 with a paralegal degree I think from Blinn College
19 is my recollection. She worked for the Texas
20 Attorney General's Office before she came to us.
21 She's been around for, oh, gosh, I think now
22 probably in her ninth or tenth year. We are the
23 first private practice job she has had. She does
24 paralegal work, it's not clerical work. She
25 actually does things that assist us in trial

1 preparation and things that lawyers would otherwise
2 have to do. I think she is well qualified.

3 Q. And the 80- or 90-dollar billing rate is
4 reasonable for her qualifications?

5 A. It's probably on the low side, but I think it's
6 appropriate.

7 Q. Moving on to the next Johnson factor, could you
8 hit on the undesirability of the case?

9 A. That rule is really more applicable to the
10 plaintiff's side of the case. I don't think that
11 actually applies to the defendants.

12 Q. And then the next factor, how about the nature
13 and length of the professional relationship with the
14 client?

15 A. That one is kind of a split thing, because I
16 have worked for RAB off and on -- I'm not sure. The
17 first case I got from them was maybe six years ago,
18 and I've had periodic work from them.

19 My relationship with CHUBB, which is where the
20 work really generated from, goes back much longer
21 than that. I know it's probably more than 15 years
22 now, probably about 18 or so years. So I have had a
23 longstanding relationship with CHUBB.

24 Q. And then the last Johnson factor, how about
25 awards in similar cases?

1 A. I've seen a number of cases where there have
2 been awards for the entirety of the case. I think
3 we actually cited in our briefing a case where, in a
4 1927 situation, the Court thought it appropriate to
5 award the entire costs of the defense to the
6 defendants. And I believe we cited that -- I think
7 I read that case to the Court at one of the prior
8 hearings, so I do think it's appropriate. I can get
9 the case cite if the Court needs it.

10 Q. Okay. And so then moving along, are you
11 familiar with reasonable and customary rates for
12 attorneys in Dallas County Texas?

13 A. Yes.

14 Q. And Dallas County Texas is where this Court is
15 actually located?

16 A. Yes.

17 Q. Okay. And then throughout this case, did you
18 and your firm keep time sheets in defending RAB in
19 this case?

20 A. We keep contemporaneous time sheets. They are
21 turned in, for the most part, daily and entered in
22 weekly by our billing department -- billing person,
23 I should say, she's not a department.

24 Q. And have you reviewed these invoices for this
25 case?

1 A. Yes, I have.

2 Q. And in your opinion, were the fees listed in
3 these invoices reasonable?

4 A. Yes.

5 Q. Were they also necessary in this litigation?

6 A. Yes.

7 Q. Okay. And in reviewing these invoices, which
8 is Exhibit 41 -- Exhibit 41 is your
9 March 30th through September 1 invoices, correct?

10 A. Correct.

11 Q. Are there redactions in those invoices?

12 A. Absolutely.

13 Q. Could you describe the purpose of these
14 redactions?

15 A. There are several redactions. I should say
16 first how the billing process works in an insurance
17 defense case, which is actually applicable here.

18 We submit fees electronically or invoices
19 electronically to the carrier. And the carrier
20 sometimes will challenge portions of the document or
21 may say that, well, we think you should have had a
22 paralegal do this or what have you.

23 So one of the things we did is we redacted or
24 waived fees that, for whatever reason, the carrier
25 had chosen to challenge us on. I think probably

1 90 percent of our stuff goes through fine.

2 In reviewing these, there were some things I
3 felt should be redacted as a matter of judgment. I
4 think there were some times where we may have spent
5 a little longer than I thought was in good
6 conscience to ask Judge Boyle to award.

7 There were some times where -- actually, I hate
8 to admit it, but it's true -- in going through this,
9 I found a reference to another case that had slipped
10 through both our audit and the insurance company's
11 audit. So I removed those and subtracted those from
12 the total award that we were seeking.

13 And there are also redactions related to pure
14 attorney-client communication and to things that I
15 thought were beyond what we should do on attorney
16 work product. But for the most part, I didn't
17 redact anything else.

18 Q. So the redactions that you referred to on
19 different cases, you are not seeking those from
20 plaintiff's counsel.

21 A. No. We put waived, and I believe that we
22 struck them out. And I know that we subtracted them
23 out from the final numbers.

24 Q. And to clarify, all of this is done in the
25 exercise of billing judgment, correct?

1 A. Yes, absolutely.

2 Q. That's because it would not be appropriate to
3 seek those fees from the opposing counsel.

4 A. I think the case law is pretty clear that, if
5 you are seeking fees, you have an obligation to show
6 an exercise of billing judgment and to do the things
7 that I have just discussed.

8 Q. Moving on to the actual costs in this
9 litigation. First off, I want to state, did you
10 bring your September and October invoices with you
11 today?

12 A. I did. And we did bring copies in case they
13 wanted to question me about it, but I was just going
14 to offer testimony on them.

15 Q. And just so the record reflects, I have
16 tendered copies of these to opposing counsel.

17 Could you go into the estimates you have
18 prepared on this case?

19 A. Sure. Obviously we've asked for the entire
20 case, which would be 133,000. That's easy. It's
21 just the total of everything through the October
22 setting.

23 But if we were to break it out into parts, we
24 actually have a chart that I'm happy to share with
25 both opposing counsel and the Court that reflects

1 these numbers, if the Court would like that.

2 THE COURT: Do you have that with you?

3 MS. MALONE: I'm looking for a copy right
4 now.

5 THE COURT: And would you just hand it
6 over to plaintiff's counsel?

7 MR. MARTIN: I have misplaced my copy.

8 THE COURT: That's fine.

9 A. I would be happy -- I will look for it when I
10 get over there, because I think I may have put it
11 somewhere else.

12 For drafting the 1927 motions, the total of
13 that was \$8,270, which included dealing with the
14 various motion to compel, the conferences regarding
15 the confidentiality agreement, the motion to exclude
16 experts, the objections to their disclosures, late
17 disclosures, the supplemental motion to exclude
18 experts, and the reply to their various responses on
19 the subpoenas. Including that, as well as our 1927
20 motion, the total of that is \$8,270.

21 The separate pleadings --

22 THE COURT: One moment. It might be
23 helpful, Mr. Martin, if you could just go up there
24 while you are talking, and you can look at it at the
25 same time. That way the questions can be clear, and

1 you can be sharing that document.

2 MR. MARTIN: Sure.

3 THE COURT: So we just finished with the
4 8,270.

5 A. 8,270. And then the drafting of the Rule 37
6 motion, which is \$2,989, which is included in the
7 expert's late -- I'm sorry. That's just the
8 drafting of the 37 motion, itself, before the Court.

9 We also have a Rule 37 issue. We had motions
10 that we had to deal with on the experts; late
11 witness designation; issues with their subpoenas;
12 pretrial objections; additions to the motions in
13 limine related to the late designations; and
14 supplemental motions to exclude related to that.
15 The total on that is \$6,681.50.

16 Then we looked at the sanctions from the end of
17 trial through August, which would be the cost of
18 preparation for the hearings and doing the hearing
19 process through August. The total of that is
20 \$23,836.50. That included preparing exhibits and
21 serving them to the Court.

22 Q. That included the drafting of your sanctions
23 motions, as well as the replies, correct?

24 A. And also actually preparing outlines for the
25 hearings, the whole preparation for the hearing

1 process itself. Proving up attorney's fees was
2 about \$1,700, and those would have been the motions
3 and negotiating -- not negotiating, but obtaining
4 the affidavit from Mr. Stevens and getting him the
5 documents he needed to review in order to render the
6 opinion he had about the reasonableness of our
7 attorney's fees.

8 Q. You're not actually seeking fees incurred for
9 drafting the motion for attorney's fees under Rule
10 5468, correct?

11 A. No; that's actually for working on the
12 affidavits and getting that information available to
13 the Court.

14 Our September invoice was \$4,049. That was
15 completely related to appearing in court, doing the
16 hearings and preparation for the hearings.

17 The October invoice was larger. It was
18 \$14,782. There were two hearings in October -- I'm
19 sorry. There was a much longer hearing, but there
20 was some evidence that was required to be submitted
21 to us prior to it.

22 We also had, I believe, those late-drafted
23 affidavits from Mr. Meyers' office that came to us
24 late with all the exhibits. So there were a number
25 of things done at the last minute, plus appearing in

1 court and preparation for dealing with Mr. Meyers
2 and some research related to that matter, and that
3 total was 14,000.

4 Q. Let me elaborate on these two invoices a little
5 bit. For the September and October invoices, you
6 have reviewed these invoices, correct?

7 A. Yes.

8 Q. Have you exercised judgment on these billing
9 invoices?

10 A. I did. I also redacted -- I think there was
11 one charge that just shouldn't have been charged on
12 this case, and we subtracted that, so the remaining
13 total was \$4,049.

14 Q. And with the October invoice, you state that it
15 is a good amount higher than the September invoice.

16 A. Right.

17 Q. Were there numerous documents filed by
18 Weisberg & Meyers and Mr. Radbil in this case?

19 A. Sure. There were a bunch of things that were
20 due, according to the Court order, on October 2nd,
21 so we had to prepare our exhibits and file them.

22 And then we received a bunch of exhibits and
23 affidavits, and I think there were objections that
24 had to be filed. I'm looking through here. Looks
25 to me that most of this was related to work that you

1 did in reviewing the exhibits and working on
2 cross-materials related.

3 I think that most of my prep time was -- I was
4 actually on vacation, so most of my prep time was a
5 few days right before the hearing when I finalized
6 preparation for the hearing.

7 Q. In your opinion, would the review and time put
8 into these exhibits be reasonable?

9 A. Oh, absolutely necessary and reasonable.

10 Q. Okay. And so you gave us the total of the
11 costs incurred due to Rule 37 issues pre-briefing.

12 A. Yes.

13 Q. Could you repeat that total.

14 A. Pre-briefing, it was \$6,681.50. By
15 pre-briefing, I believe we are talking about the
16 formal 37 motion that has been submitted to the
17 Court that we are here on today.

18 Q. And that number could actually be low because
19 it doesn't include any time from trial, correct?

20 A. It actually doesn't include -- I will give you
21 an example. When we learned about some of these
22 witnesses, I had to -- because I -- I don't think
23 you can allow a witness to take the stand without
24 some preparation. I prepared outlines for some of
25 these doctors -- or at least Dr. Betancourt that I

1 thought was going to testify. We didn't charge for
2 that.

3 I actually had to work into my examination of
4 Dr. White a few more questions to sort of eliminate
5 that problem. I prepared outlines for some of the
6 family members -- I mean family members' friends
7 that Dr. White testified to.

8 There was a neighbor that he had whose name
9 also showed up as a psychologist, so it took me a
10 while to track down whether or not he was a
11 psychologist. We didn't include any of that in our
12 cost, which would have been a fair thing for us to
13 have done. We were just trying to do things that
14 were more easily quantifiable. So some of my trial
15 prep did not get added into the Rule 37 problems.

16 Q. And then moving on to the separate 1927
17 sanctions motion, have you estimated costs incurred
18 due to conduct that you believe is sanctionable
19 under 1927?

20 A. Well, again, there are other things that are
21 not included here. What we have specifically asked
22 the Court in terms of pleadings is \$6,960.50. This
23 does not include, for example, all of the costs I
24 mentioned to Mr. Radbil doing what the Court asked
25 to us do in terms of talking about exhibits.

1 Unfortunately, I can't say that there has ever
2 been -- I actually don't usually do them, I try to
3 pawn them off on you, Mr. Martin. But if there had
4 been discussions on motions to confer, most of those
5 times with Mr. Radbil, those sometimes would take an
6 hour to an hour and 20 minutes to work through each
7 of the issues. And I believe that those would have
8 been fair game, but we did not include those in this
9 number. We tried to stick to mostly the pleadings
10 documents as opposed to some of the intertwined
11 things in terms of a specific 1927 motion.

12 Q. And we did deal with the issue where Mr. Radbil
13 was late to trial and the Court had stated we would
14 be compensated for the three hours of our time.
15 Have you come to the calculation for that?

16 A. That would be for \$945, which would have been
17 for the time for both of us. That was one of those
18 days that both of us were here. You were here
19 specifically to help me with the issues related to
20 the charge, and Mr. Radbil did not appear.

21 Q. And we had previously filed a motion for our
22 attorney's fees in this case where we totaled up all
23 of the amounts while exercising billing judgment.

24 Do you have the number of fees we requested in
25 that motion?

1 A. Sure. And that would have been through the end
2 of trial, which was \$87,155, and obviously that's
3 been increased by the amount of time we have gone
4 through these hearings and the work since that time.

5 Q. What is the total of the entire amount with
6 sanctions and attorney's fees?

7 A. Just to be clear, the amount since the trial
8 involving the sanctions hearings and actually
9 attending the sanctions hearings, is \$44,951.50. So
10 the total amount we have asked the Court to award us
11 is \$133,051.50.

12 Q. Could these amounts that you have estimated and
13 given to us, could those actually be lower than the
14 costs incurred?

15 A. They are lower than the costs incurred to our
16 client.

17 Q. And with all of these proceedings, the motions
18 filed for sanctions, is this a personal vendetta you
19 have?

20 A. No, absolutely not.

21 Q. Were these proceedings in the best interest of
22 your client?

23 A. I think they were in the best interest of my
24 client, because I think this case should have
25 resolved at the very beginning. I think it's also a

1 bigger issue, because I think it's probably in the
2 best interest of the legal community to deal with
3 these kinds of issues.

4 MR. MARTIN: No further questions.

5 THE COURT: Mr. Jefferson.

6 MR. JEFFERSON: Thank you, Your Honor.

7 THE COURT: Do you have the chart that she
8 was looking at, a copy of it?

9 MR. MARTIN: I found one of them.

10 THE COURT: All right. We're just going
11 to consider that a demonstrative exhibit for right
12 now.

13 **CROSS-EXAMINATION**

14 MR. JEFFERSON: May I proceed, Your Honor?

15 THE COURT: You may.

16 Q. (By Mr. Jefferson) Ms. Malone, good afternoon.

17 A. Good afternoon. I hope you are feeling better.

18 Q. Well, thank you. I hope I am, too, and I will
19 do my best to be brief.

20 Now, let's establish a couple of parameters
21 here, first of all. The sanctions motion that is
22 being sought, both the Rule 37 and the 1927 costs,
23 those are being sought against the firm and Noah and
24 not Dr. White, correct?

25 A. Mr. Radbil, yes, correct.

1 Q. Yes, I'm sorry. I'm not sure what I said, but,
2 yes, against the firm and Noah Radbil, but not
3 Dr. White, correct?

4 A. Yes, that's correct.

5 Q. Okay.

6 A. There was a different motion against Dr. White
7 that the Court has already taken care of.

8 Q. And in that regard, just so the record is clear
9 on that, with respect to the costs of court that
10 were assessed, those costs of court have now been
11 paid. True?

12 A. We received a check, yes.

13 Q. And there's a little bit of a question on some
14 timing issues. You had indicated before that you
15 thought that Mr. Radbil was three hours late for
16 trial, and so I want to clarify that. What time was
17 Mr. Radbil supposed to be here on the date that he
18 was late for court?

19 A. He was supposed to be here at 8:00 a.m. I
20 think he showed up at 10:15. If I said three
21 hours --

22 THE COURT: Well, I think the issue there
23 was that his client had told us pretty clearly that
24 he was supposed to meet his client at 7:00, and
25 that's where it all started. His client was out

1 here bewildered that he couldn't find him at seven,
2 so that's where the three hours came from.

3 Q. Fair. But here's where there is a divergence,
4 because you are not asking the Court to order a
5 reimbursement for the time that Mr. Radbil was late
6 meeting with his client, you want costs for the two
7 hours and 15 minutes, from the time he should have
8 been here at eight until the time he got here at
9 10:15.

10 THE COURT: Understood.

11 A. I think the 9:45 number, if you add it up,
12 doesn't add up exactly. So it is reduced at some
13 percentage.

14 Q. (By Mr. Jefferson) And perhaps, then, there
15 has been a miscalculation, and if there has, we will
16 certainly clarify it. But would you agree that
17 Mr. Radbil has tendered to you a check, I believe
18 it's in the amount of approximately \$635, to
19 approximate the two hours and 15 minutes?

20 A. He gave -- he tried to give me a check. I told
21 him that I did not feel comfortable receiving it
22 until the court ordered it. I don't know the dollar
23 amount, but I take your word for it.

24 Q. Fair enough.

25 THE COURT: So you did not accept the

1 check.

2 THE WITNESS: I didn't think the Court had
3 ordered it yet.

4 THE COURT: Right.

5 Q. (By Mr. Jefferson) Fair. And so the point
6 that I'm simply trying to make, and we can certainly
7 ask Mr. Radbil for the particular amount, is that
8 Mr. Radbil, that was something that he at least
9 attempted to pay.

10 A. Sure. But we don't know what amount the Court
11 has awarded yet.

12 Q. Sure.

13 A. She could do more if she wanted, for example.

14 Q. Absolutely. The point being is that you are
15 certainly not trying to dispute that, irrespective
16 of the fact that the hearing wasn't over with, that
17 Mr. Radbil tried to pay that in advance.

18 A. No, I am not at all. I just didn't feel
19 comfortable taking it yet.

20 Q. Fair. Thank you, ma'am.

21 Now, you have numbered a number of cases
22 against Weisberg & Meyers, true?

23 A. Yes, I think we have.

24 Q. And they've brought cases against a number of
25 your different clients, not just RAB, correct?

1 A. Yes. I think this is the only RAB case we had.

2 Q. Okay. And they have been designated as class
3 counsel in other cases that you have been involved
4 in, or have they not?

5 A. No, they have never been designated class
6 counsel in any case of mine.

7 Q. Of yours, okay. Have you moved for sanctions
8 against them in other cases?

9 A. Well, the only case that I'm aware that I can
10 recall is that, following this hearing, there was --
11 well, I should tell you that there was a Supreme
12 Court case that came out during this trial that
13 seemed to indicate you could recover costs and maybe
14 attorney's fees when you had won on certain issues.

15 So following this trial, we already had it
16 briefed, we filed the same similar motion in one
17 case that I'm aware of with them. And then the
18 magistrate said they didn't do it, our client was
19 fine to let it go at that point. We just took a run
20 at it and it didn't happen, but it's not the same
21 motion as this one.

22 Q. Sure, sure. Let me ask you this question: And
23 you know, obviously, I'm a little bit new to this
24 matter, so I wasn't here for the first two hearings,
25 but was there a corporate representative from RAB

1 present at either of the first two hearings on the
2 sanctions issue?

3 A. I didn't -- he wouldn't be offering testimony.
4 I did not ask my client to appear.

5 Q. Okay.

6 A. Neither did Dr. White.

7 Q. Okay. So just to be clear, the answer is --
8 for whatever reason, the answer is no. True?

9 A. No, no.

10 Q. I know that somebody came in.

11 A. That would be Mr. Martin's father.

12 MR. JEFFERSON: Oh, afternoon, Mr. Martin.

13 Q. (By Mr. Jefferson) I actually know who he is,
14 at least by name.

15 A. You would be the only person in Dallas who
16 doesn't today, so. . .

17 Q. Well, I'm on the other side of that. That's
18 not a representative of RAB here today.

19 A. No.

20 Q. That's my point. Thank you.

21 Now, is it your belief that debt collection
22 cases such as Dr. White's are rarely settled in
23 mediation?

24 A. In general, that is probably true. There have
25 been times where it has happened, but most of the

1 time these cases settle early on among the attorneys
2 and mediators rarely help.

3 Q. Would you also agree that, if they don't settle
4 early on in the process, the primary reason or the
5 primary stumbling block in these type of fee
6 shifting cases is because of issues regarding
7 attorney's fees?

8 A. That's not always true, because sometimes there
9 are actual damage concerns, but I would say the vast
10 majority of the times that's true.

11 Q. Yes. And although I wasn't here -- and for the
12 Court's reference, I'm referencing page 14, starting
13 at line 4 of the initial hearing that started on
14 August the 2nd and in particular with respect to
15 Ms. Malone's opening statement.

16 And Ms. Malone, I'm happy to show it to you,
17 but let me just ask you the question because I think
18 you will recall it. And it's where you talk about
19 the motive, and you were talking specifically about
20 the fee agreement. And do you recall saying
21 something to the effect of, the fee agreement, it
22 gives the motive. It explains to the Court that the
23 fee agreement shifts the ability to settle the case
24 out of the hands of the consumers that they say they
25 are trying to protect to Weisberg & Meyers.

1 Do you recall saying that, in general?

2 A. That is -- those exact words, I don't recall.
3 I don't doubt that I said that because I believe
4 their fee agreement does that.

5 Q. Okay. So let's talk about that for a second.
6 You've heard the testimony in here from Mr. Meyers
7 previously. You don't dispute the fact that
8 Mr. Radbil didn't have anything to do with the
9 drafting of the fee agreement in this case, you
10 don't dispute that, do you?

11 A. I have no reason to believe -- I think that
12 that's a form that probably predated his employment.
13 I have no reason that he played with it at any point
14 in time.

15 Q. In fact, if we look at the original complaint
16 that was filed on behalf of Dr. White, we would
17 not -- we would not see Noah Radbil's name on that,
18 correct?

19 A. I think that is correct. I know I dealt with
20 Mr. Kurz. I don't remember whose names were on the
21 pleadings, but I think that's correct.

22 Q. Okay. You certainly remember -- and that's
23 fine, the record will speak for itself.

24 You certainly remember that the original
25 attorney in charge in this case was Mr. Dennis Kurz,

1 right? Or do you recall that?

2 A. He's the person I dealt with. I can't swear
3 that he was designated as lead counsel. But my
4 suspicion would be yes, because usually that's who I
5 would talk to.

6 Q. Okay. And there were some questions before,
7 and I think Mr. Martin testified that he didn't
8 recall about a pre-suit -- he said that you didn't
9 recall whether or not there was a pre-suit demand
10 for \$8,500 in the case, but that would have been
11 from either Mr. Kurz or somebody else since that
12 predated Mr. Radbil's tenure on the case, right.

13 A. I don't think they were referring to a pre-suit
14 demand. I think they were talking about an
15 8,500-dollar offer or demand that Mr. Meyers said
16 was relayed to me by Mr. Kurz, which I have no
17 actual memory of.

18 Q. Fair enough.

19 A. But I don't think it was pre-suit.

20 Q. Fair. Do you recall that at some other point
21 in time you asked Mr. Kurz for a demand and that
22 Mr. Kurz said that at this time he wasn't going to
23 make that demand?

24 A. That would have been early into the case. I
25 think we looked at it, it was September the 9th when

1 he said that, 2011.

2 Q. Right. September 9, 2011, Mr. Kurz said that
3 he wouldn't make a monetary demand for settlement,
4 correct?

5 A. Yeah; words to that effect, yeah.

6 Q. Yeah, yeah. And the point being is that
7 Mr. Radbil had nothing to do with the decision maker
8 of a higher up like Mr. Kurz or anybody else right?

9 A. I have no clue how their process worked, to be
10 honest with you. I could only tell you who relayed
11 the information to me.

12 Q. Okay. And it was someone other than
13 Mr. Radbil.

14 A. Right. I don't know if Mr. Radbil was involved
15 in that case or not. Sometimes I have had younger
16 lawyers working on stuff with me. I don't know if
17 Mr. Radbil was.

18 Q. And we're talking about September of 2011.
19 When you made your Rule 68 offer of judgment, that
20 was made to Mr. Kurz, correct?

21 A. Probably. I don't remember the letter, but I
22 think that sounds right.

23 Q. Okay. And you would agree that since it's a
24 Rule 68 motion there should be a certificate of
25 service on there.

1 A. On the -- oh, there was. I think there was
2 a -- I think there was a discussion about it in the
3 briefing that they had received it but didn't
4 respond to it.

5 Q. Yes. And do you recall that that certificate
6 of service shows it was sent to Mr. Kurz?

7 A. I don't doubt you, I just honestly don't
8 remember what the certificate of service says. I
9 don't doubt you at all. If you tell me it says
10 that, that's fine.

11 Q. Fair enough. Thank you.

12 And for whatever reason, there were some
13 objections filed concerning getting this case to an
14 early mediation. Do you recall that?

15 A. Mr. Kurz and I made a joint objection about
16 mediation together.

17 Q. Yes. And to be fair about that, you conferred
18 with Mr. Kurz, and that was a -- that was a joint
19 decision. But whoever was involved in that joint
20 decision when those discussions were going on, one
21 person that was not a part of those discussions was
22 Mr. Noah Radbil, true?

23 A. Mr. Kurz was in trial, is my recollection, at
24 the time. I don't recall if I received a call from
25 Mr. Radbil to relay information to him back and

1 forth, but there was some sort of intermediary. And
2 I don't remember who it was, to be honest with you,
3 Mr. Jefferson, but somebody called me because he was
4 in trial somewhere in East Texas, so we went back
5 and forth.

6 But ultimately, I understood that that was a
7 joint decision made with Mr. Kurz. If it was
8 Mr. Radbil that called me, I don't remember. I just
9 remember he was in trial and somebody else called me
10 for him on his behalf is what they said.

11 Q. Okay. Let me ask this question since you just
12 testified previously that you keep contemporaneous
13 time records and that those would -- those are
14 entered almost daily. Would your time records
15 reflect who it was that you talked to?

16 A. It's possible, but it's also very likely I just
17 put Plaintiff's Attorney. If it does say in there
18 that I spoke with someone else, I did. It's also
19 very likely I just put Plaintiff's Counsel.

20 Q. Okay. And we can look at that at your leisure.
21 And really, all I'm interested in is that, if it has
22 my client's name in there -- if it doesn't have my
23 client's name in there, then --

24 A. What I can tell you is I don't remember
25 speaking to Mr. Radbil, but I cannot say that I only

1 spoke to Mr. Kurz.

2 Q. Okay. Now, do you recall in November of 2012
3 you had settlement discussions that took place with
4 Mr. Meyers?

5 A. Mr. Meyers -- they were e-mail exchanges, but
6 yes.

7 Q. Okay. And -- and was Mr. Radbil included on
8 those e-mail exchanges?

9 A. He -- Mr. Meyers may have cc'd him on them, but
10 my e-mails were addressed directly to Mr. Meyers and
11 his e-mails were to me. But I think that
12 Mr. Radbil's name may have been as a cc on at least
13 some of them, but I'm not positive. We can look at
14 them.

15 Q. Sure.

16 A. He wasn't part of the conversation. He may
17 have been copied on them.

18 Q. And you have anticipated my next question.
19 Regardless of the cc list -- and I don't recall him
20 being on there, but they will reflect whatever they
21 are. The point is that the two principals, if you
22 will, were the ones who were having those
23 discussions, right?

24 A. The e-mails, yes.

25 Q. Now, Mr. Radbil, however, did participate in

1 the -- in the moderated settlement conference with
2 the magistrate.

3 A. Judge Stickney, yes.

4 Q. It's Radbil Exhibit Number 1, but I don't think
5 you will have to look at it, but I want you to feel
6 free to. The magistrate judge's settlement report
7 says that the parties conducted the settlement
8 negotiations in good faith but were unable to reach
9 a settlement, correct?

10 A. That's what Judge Stickney told us that he
11 would be entering, and that's what the order I think
12 said.

13 Q. And neither side in this case filed an
14 objection to the magistrate's report, true?

15 A. We -- we had all of the decision makers
16 present, and we exchanged offers, so I think we both
17 felt we had complied with that.

18 Q. Yes, yes. But my question is, is that after
19 the magistrate judge issued his report, nobody filed
20 something that said -- where Mr. Radbil said you
21 negotiated in bad faith or you said Mr. Radbil
22 negotiated in bad faith, correct?

23 A. I don't recall anybody filing anything like
24 that.

25 Q. Okay. Let's do this. Ultimately, one of the

1 things that you do is that there's a joint pretrial
2 order that gets filed in this case, correct?

3 A. Yes. I think there is in every federal court
4 case.

5 Q. Okay, and I'm laying the predicate here. But
6 my point being is, I think that the trial estimate
7 that was given in the joint pretrial order was
8 two-and-a-half days. Do you disagree with that?

9 A. I don't remember. That sounds reasonable for a
10 debt collection case.

11 Q. Okay. And by the time this case started until
12 the time the case was concluded, even with the
13 tardiness of Mr. Radbil, the trial concluded within
14 two-and-a-half days, correct?

15 A. Yes, because the judge -- because the other
16 witnesses did not testify, yes.

17 Q. Okay. For whatever reason, it concluded in the
18 time frame that the parties estimated. True?

19 A. I -- this is where I'm -- we -- we did a
20 pretrial conference on Monday, the trial started on
21 Tuesday. I want to say we finished Thursday or
22 Friday, but I don't remember for sure, Mr.--
23 Mr. Jefferson. But we have the transcript we can
24 check the time.

25 Q. Sure. Okay. Now let's talk about -- let's

1 talk just briefly about the issue of expert
2 witnesses. And in particular, I'm referring now to
3 the pretrial transcript at page 76.

4 Do you recall the Court noting, when it came to
5 the subject of experts, that: I think in good faith
6 both sides have addressed this issue of expert
7 witnesses or lack thereof. But I agree, from what I
8 have heard so far, it goes to the very core of what
9 your client is accusing them of doing. And right
10 now I overrule the objection. Let's move on.

11 A. I'm sorry, I don't have enough context to tell
12 you. I believe you are reading it correctly. I
13 don't remember that testimony or the context for it.
14 If you want to show me, I will be happy to. I just
15 don't have the context for that, I'm sorry.

16 Q. Very fair. And my question is simply, because
17 I don't want to belabor the point, and the record
18 will reflect whatever it is, and I appreciate you
19 not disputing my reading abilities, but it says what
20 it says, right?

21 A. Right. But I don't know what you are talking
22 about, if there was more to it. And I really didn't
23 understand what you were saying. I'm sorry.

24 Q. Fair enough. Let's go to the issue of exhibits
25 for a moment.

1 THE COURT: Mr. Jefferson, on that, what
2 are you quoting from, the pretrial conference or at
3 trial?

4 MR. JEFFERSON: Yes, it's at page 76, what
5 I have listed as pretrial transcript.

6 MS. MALONE: Those were the objections
7 that the Court was ruling on?

8 MR. JEFFERSON: Yes, that's correct.

9 MS. MALONE: I don't remember what the
10 objection was that she overruled. And I'm sorry,
11 from what you read to me, I just didn't get the
12 context.

13 THE COURT: So to answer my question, that
14 was the pretrial conference.

15 MR. JEFFERSON: Yes, Your Honor.

16 Q. (By Mr. Jefferson) Now let's talk about the
17 issue of exhibits. You gave some testimony about
18 what your normal workdays were and the like. And
19 like you, I also try not to work on Saturday and
20 Sunday. But would you agree with me that many times
21 if you have a trial that starts on Monday that
22 Saturday and Sunday do become workdays?

23 A. Sure, but I try to respect the other attorney's
24 time and return calls and minimize the impact we
25 have on each other's lives, as you have with me,

1 Mr. Jefferson, to be honest with you.

2 Q. Thank you. And I guess my question is, is
3 that's certainly a two-way street, in other words,
4 because you are balancing what you need to do and
5 family time and other activities; there's only so
6 many things that you can get to on a weekend,
7 correct?

8 A. Sure. But I would have called and said, hey, I
9 can't talk to you, after the second call, and said,
10 let's pick a time when I can. I wouldn't have just
11 ignored the ten calls and e-mails.

12 Q. Okay. And that, of course, presumes that
13 that's what Mr. Radbil actually did. I mean, you
14 are not sitting here saying that you know that he
15 contemporaneously received your telephone calls and
16 then decided to maliciously not answer them or
17 anything.

18 A. I don't know. All I know is that I called him
19 on his cell phone and his work number and I e-mailed
20 him. Usually one of those ways will get an attorney
21 who has been ordered by the judge to confer with the
22 other side to correspond.

23 And I will note that he didn't apologize to me
24 when he did finally speak to me. He didn't say, I'm
25 sorry, I didn't get your calls, or, I apologize, I

1 didn't get any of your e-mails. I got no sort of
2 sign of courtesy that you would expect from an
3 attorney who has had their phone on the blink or
4 something like that.

5 Q. A fair point. A fair point. And I guess my --
6 and I guess my question is, because I want to move
7 from the issue of courtesy and what Mr. Radbil's
8 sensitivities were or weren't to the actual Court
9 order. It's my understanding that what the Court
10 said was that the Court wanted you and plaintiff's
11 counsel to confer prior to the commencement of
12 trial. True?

13 A. Yeah, I think it might have said prior to the
14 pretrial, which would be the next day.

15 Q. And while it may not have been as prompt as you
16 would have liked or with the courtesies that you may
17 have been afforded previously, it did at least occur
18 prior to the commencement of trial. True?

19 A. I spoke with Mr. Radbil, and I will not say
20 that we got very far, but I did speak with him.

21 Q. Fair. Now let's talk about -- let's talk about
22 some of the cost issues for a moment. Prior to
23 today, had you ever disclosed the amount of damages
24 that you were seeking in terms of the monetary
25 recovery?

1 A. We did in the motions, the original motions.
2 Today we just supplemented them for the new time
3 that had been given --

4 Q. Okay.

5 A. -- for the last two months, because those were
6 not created at the time we did our last exhibits.

7 Q. Are you asking the Court to award you fees for
8 time that either the client wrote off or that you
9 didn't charge your client for?

10 A. No, we subtracted those. I think you will see
11 that they were waived. And if you were to look at
12 the numbers, we subtracted those from the total
13 bills.

14 Q. Okay. And so therefore, if we go through your
15 bills or the Court goes through your bills, since
16 you kept them as you testified contemporaneously and
17 that they were entered daily --

18 A. They are entered weekly, but we handwrite them
19 daily.

20 Q. Fair. We do that, too.

21 A. It's old school.

22 Q. Or we try to.

23 So therefore, your time records will reflect,
24 for example -- and I know you testified to some
25 things that you wrote off. But if, for example, you

1 charged your client for preparing a witness outline
2 for a witness that you contend was late disclosed or
3 improperly disclosed, then that will be reflected in
4 your time records?

5 A. Right.

6 Q. Okay. And just so I'm clear on this, are you
7 contending that the plaintiff in this case late
8 disclosed witnesses?

9 A. Yes, absolutely.

10 Q. Okay. And are the late-disclosed witnesses,
11 for lack of a better term -- and I hate to use the
12 colloquial term for it -- but would those be the
13 moan and groan witnesses, his friends and colleagues
14 who were purportedly going to testify about his
15 mental anguish?

16 A. The majority of them I would put in the
17 traditional moaners and groaners. But I think there
18 were one or two who were, by trade, psychologists
19 and they may have known him at work.

20 But that testimony, unfortunately when you have
21 someone that has a psychology background like that,
22 it sort of takes it out of that and puts it into a
23 quasi something else category.

24 Other than that, yeah, I think there was only
25 one that fit in that category. The others I would

1 call moaners and groaners.

2 Q. And when you talk about that fit quasi into
3 another category, the point that you are making is
4 that because they have -- based upon their
5 knowledge, skill, training, and experience that they
6 have a degree that might qualify them as an expert
7 witness, that therefore they may be testifying as an
8 expert witness.

9 A. Right.

10 Q. But you would certainly agree with me, for
11 example, let's say you had an automobile accident
12 case and one of the witnesses to the car wreck is an
13 engineer or a police officer. That doesn't
14 automatically transform that fact witness into an
15 ipso facto expert witness simply because they happen
16 to have knowledge, skill, training, and experience
17 that would qualify them to be an expert witness in
18 certain circumstances merely because they happen to
19 fortuitously be there. You would agree with that,
20 wouldn't you?

21 A. In a general proposition, but a psychologist
22 testifying about mental anguish is a little bit
23 different.

24 Q. Okay. And ultimately whoever this psychologist
25 was, that psychologist did not testify, true?

1 A. That's correct, absolutely.

2 Q. And I want to go into one of the other points
3 that you made with respect to supervision issues.
4 When I read your opening statement, you made the
5 statement: I don't think that they supervise
6 Mr. Radbil one bit.

7 What's the basis for your contention that you
8 don't think that Mr. Radbil was supervised?

9 A. Because I've seen Mr. Radbil in trial and in
10 hearings. And some of the things that Mr. Radbil
11 has done in depositions tells me that no one has
12 taught him some fundamental things that you would
13 know if you were being supervised.

14 I have never seen anyone come with Mr. Radbil,
15 save one hearing. He's always been by himself. I
16 have seen Mr. Radbil in depositions have to -- well,
17 we tried a case in Fort Worth, and he didn't know
18 how many jurors you were allowed in state court,
19 which is set by the rules. He was calling someone
20 else asking them for advice. He didn't know the
21 fundamentals of the state court practice, which
22 tells me that no one was telling him how to do
23 things. And frankly, I felt a little sorry for him
24 about it.

25 Q. And so by the same token, is his lack of

1 training something that you blame Mr. Radbil for
2 personally?

3 A. Not his lack of training; some of the things
4 he's done, I would hold Mr. Radbil personally
5 responsible for.

6 Q. Okay. And I guess at the end of the day --
7 without going into a laundry list of those
8 complaints, at the end of the day could those
9 deficiencies either have been cured in the past or
10 can they be cured in the future if Mr. Radbil, in
11 your opinion, had better supervision, training, and
12 education?

13 A. I'm trying to answer your question honestly.
14 Some things yes, some things no. Lying to the Court
15 is not about lack of supervision. That's just -- I
16 don't care who you are, how long you have been
17 practicing law, you should know that you do not lie
18 to a judge.

19 Q. Okay.

20 A. But other than that kind of thing, a lot of
21 mistakes Mr. Radbil made I do think could be
22 resolved if he actually did some training, like
23 taking care to make sure that your disclosures are
24 made timely. That's a training issue. That's
25 the -- that's one thing I tell people all the time

1 is, you know, 45 days before a deadline for
2 discovery you go through and supplement your
3 discovery. That comes from the top and that comes
4 from training, and that's something he could cure
5 through experience and someone telling him how to
6 practice law.

7 Q. And I want to go to the issue about -- about
8 lying to the Court. And I think for purposes of the
9 record we need to be very clear concerning that
10 allegation. And so without -- without trying to
11 overdo or overbeat the point, can you just briefly
12 tell me what you believe those misrepresentations
13 were?

14 A. Oh, gosh. Okay. I will try to be fair.
15 Mr. Radbil told the Court that he believed that the
16 \$1,500 had been supplemented in some disclosure.
17 And then we gave the Court a copy of the actual
18 supplementation. And at that point he changed his
19 story to, well, I don't believe I'm required to
20 supplement under the rules. And Judge Boyle talked
21 to him about what Rule 37 actually says.

22 Then he said, we told them -- the magistrate at
23 the mediated settlement conference, and that
24 suffices, and Judge Boyle corrected him at that
25 point. So I think those things were, in fact, not

1 true. He had not supplemented them, and he
2 certainly I believe knew that he had an obligation
3 to do it.

4 Where it actually then gets more complicated,
5 unfortunately, is in the sanction hearing -- well,
6 on the stand, then, Mr. Radbil, upon questioning
7 from Mr. Meyers, took the position that the entire
8 \$45,000 came from a rogue client. We had never
9 heard that statement before. He never said that to
10 Judge Boyle that -- he never -- when we were having
11 the 37 motion in the middle of trial, he never said,
12 Judge, I had no clue my client was going to say
13 that. In fact, he said, we are not required to tell
14 them that, Judge. That's fine, they know, they
15 heard about it at the mediated settlement
16 conference. I don't know how else you characterize
17 that. To me, it was a lie; you could call it a
18 misrepresentation. I think Judge Boyle talked about
19 it.

20 And you further compound that with Dr. White's
21 testimony, which we pulled for the Court in case
22 Dr. White shows up, where Dr. White sua sponte said
23 to the Judge that Mr. Radbil had personally promised
24 him that those damages would be submitted at trial.

25 And I looked at Dr. White's declaration, and

1 what it actually says is just that he was told they
2 were not going to ask the jury for an amount. It
3 never says anything different. It doesn't say in
4 his declaration that he was not told that those
5 damages would not be admitted at trial.

6 I don't know how to -- I know those things are
7 very contradictory. In my opinion, Mr. Radbil lied
8 to the Court. And I'm sorry to say that, but that's
9 exactly what I saw.

10 Another example was that Mr. Radbil told the
11 Court that I had taken a position on a dialer, that
12 he -- whether or not something was a DTDS, that he
13 knew was not my position and he knew I had been
14 fighting all along. I had filed motions for summary
15 judgment about it. It was something that I had been
16 disputing all along. And that, to me, was -- maybe
17 he was arguing a point, but to me, knowing that I
18 had not said that, was not a good position.

19 A third thing that he did that, in my opinion
20 was maybe a lie by omission, is that he argued to
21 the Court about re-calling my client to the stand as
22 a corporate representative. And he went on and on
23 to Judge Boyle about how my client had testified a
24 certain way in deposition one and never told the
25 judge that -- our position was that topic was not

1 proper, it was not done. And we resubmitted the
2 witness after he had educated himself, and there was
3 a second deposition that directly addressed the
4 point. I think that was a misrepresentation to the
5 Court. And I don't know how else you characterize
6 that.

7 I think there was a fourth thing that came up.
8 Off the top of my head, those were the main ones.
9 And frankly, when he said what he said about the
10 rogue client, it turned my stomach because that, to
11 me, was a flat-out lie to the Court, and you just
12 don't do that.

13 Q. Okay. And by the way, I appreciate your candor
14 because -- because we need to make sure that we
15 address each one of these when Mr. Radbil takes the
16 stand.

17 A. And understand, there may be more. Those are
18 just the ones you asked me off the top of my head.

19 THE COURT: Just to be clear,
20 Mr. Jefferson, the record is replete with
21 problematic conduct by Mr. Radbil, and the Court
22 viewed it. And so the requirement for determining
23 whether or not it happened isn't going to hinge
24 specifically on what Ms. Malone states.

25 This last portion where Mr. Radbil was

1 trying to re-call a witness that he had had on the
2 stand for quite some time and was indicating with
3 great urgency that he had had a very unfair
4 situation in the pretrial during discovery with this
5 witness -- and he's quoting from a deposition and
6 how this witness never testified to this and never
7 testified to that -- it turns out later that he's
8 quoting from the first deposition before Judge
9 Kaplan had ordered a second deposition which, in
10 fact, occurred and cured the defect.

11 So it was things like that. And I don't
12 want the record -- as big as this record is going to
13 be and as convoluted as all of this is, I want all
14 of that to be clear, and that it would be impossible
15 to sit here for three days and go through every
16 single thing that happened that was problematic
17 about Mr. Radbil's conduct.

18 MR. JEFFERSON: Yes. And thank you,
19 Judge, because you make a very important
20 distinction, and it's the same distinction that I
21 was trying to make. I was not trying to limit
22 Ms. Malone, because my question was not -- to use
23 your excellent phrase -- problematic conduct.
24 There's a distinction and a difference between
25 problematic conduct, either be it, you know, goofy,

1 dumb, inexperienced, forgetful, a mistake, or the
2 whole other laundry list, and all of those things
3 can be problematic. But merely because something is
4 problematic does not mean that somebody acted with
5 deceit and intent. That's the only distinction I
6 was trying to make.

7 THE COURT: Correct. But the distinction
8 has to be clear that Ms. Malone isn't tied
9 forever -- whether or not she wins or loses this
10 sanctions hearing -- to what she says up here,
11 specifically as to what he said that I might have
12 thought was misrepresenting himself. This record is
13 just too big to discern that at this moment, unless
14 you want to spend another three or four days on
15 this. I think it carries over, and I just want that
16 to be clear.

17 MR. JEFFERSON: Yes, Your Honor. And I
18 certainly understand that you're not only the umpire
19 but you're also the fact-finder. But I was --
20 how ever inartfully, that was the distinction I was
21 trying to make.

22 THE COURT: I understand.

23 MR. JEFFERSON: Thank you.

24 Q. (By Mr. Jefferson) And by the way, with
25 respect -- let me just take one of these that you

1 mentioned, the auto dialer. For whatever reason,
2 there was something in the pretrial that indicated
3 that an auto dialer was used. For how ever that got
4 in there, that got in there, right?

5 A. As you know, pretrials are exchanged back and
6 forth. I don't know how it got in there, but he
7 certainly knew that was not my position. I also
8 don't think that that's what that meant.

9 And the Court told him at the time that she did
10 not think that it was fair for him to say something
11 if it was a mistake that was in the pretrial. And
12 I'm not trying to point fingers, because that
13 document went back and forth between several people.
14 And I don't know who put it in there or how it got
15 there, and I'm not saying it came from Mr. Radbil's
16 office because I don't know. But he knew that was
17 not my position, and he certainly shouldn't have
18 suggested to the Court that it was.

19 Q. Fair. And just so we are clear, I'm not trying
20 to point any fingers, either.

21 A. Right.

22 Q. Again, I'm kind of talking about kind of the
23 distinction between, you know, problematic conduct
24 versus something that's deceitful. So thank you for
25 that clarification.

1 Let me just ask you this question, because
2 there has been a variety of stuff that has been
3 requested. And when I looked through the opening
4 statements that you made, you know, you laid out for
5 the Court all of the various options that were
6 available with respect to sanctions both under 37
7 and 1927 --

8 A. Inherent authority.

9 Q. Yes -- against everybody involved. But since I
10 just represent Mr. Radbil, I'm going to ask you
11 solely about Mr. Radbil, and let me just ask you
12 this question straight up: Is -- is it -- is it
13 your position here today that one of the remedies
14 that you are going to ask the Court for today,
15 understanding of course that the Court can do
16 whatever the Court wants under its own inherent
17 authority irrespective of whatever you or I or these
18 other folks have to say, but I'm just asking you as
19 a fellow member of the bar, are you asking the Court
20 to have Noah Radbil be disbarred in the Northern
21 District of Texas?

22 A. I think that lying to a federal judge warrants
23 that disbarment for Mr. Radbil. Personally, I would
24 hate to see that happen. But the fact of the matter
25 is, I think that the judge may have no choice, given

1 the number of times that he lied to the Court.

2 The reason I say personally, from a
3 professional standpoint I don't think that that
4 should be tolerated and those lawyers should be
5 disbarred. Personally I just don't like to do that
6 to someone else.

7 Q. Okay. And do you believe that there are lesser
8 restrictive means, to the extent that the Court
9 finds that Mr. Radbil -- and again, I'm leaving the
10 firm out of this, I don't represent them. But to
11 the extent that Mr. Radbil in his individual
12 capacity, not based upon inadequate training or
13 supervision, but because of any particularized
14 problematic conduct, are there other ways, short of
15 disbarment, in which some of those matters may be
16 addressed?

17 A. If Mr. Radbil had come forward and apologized
18 to Judge Boyle the very first day at the very first
19 hearing for more than just being late for court,
20 shown remorse and accepted -- like Mr. Martin did --
21 accepted that he made a mistake and apologized and
22 rectified it immediately, then I think any of the
23 following things might work.

24 I think Mr. Radbil could be on sort of a
25 probated sentence, and if he didn't do certain

1 things over a period of time his license could be
2 revoked. I think there is ample evidence that this
3 firm -- and unfortunately, I can't separate
4 Mr. Radbil from that because he was involved in a
5 lot of those Washington things -- don't take
6 sanctions from federal courts seriously.

7 So I think that there would have to be some
8 evidence that he did training, maybe some
9 restrictions that he be required to have supervision
10 on cases that he was handling that could be
11 quantified in some way.

12 I think he would have to do continuing
13 education. Maybe because of the lying factor, maybe
14 he would need some sort of counseling. I am coming
15 up with ideas that I have seen in clients that I
16 have represented who had bar matters, kinds of
17 things that the State Bar has approved for someone
18 who would be on a lesser -- a less -- a less than
19 complete disbarment action.

20 And honestly, if Mr. Radbil had apologized to
21 the Court and to my client, I probably would be
22 advocating that, but Mr. Radbil seems to show no
23 remorse. So in that position, I'm not sure that
24 Judge Boyle has a choice.

25 Q. Okay. And you made a reference a moment ago to

1 the Washington things. Those relate to the
2 pro hac vice motions that I believe the judge read a
3 portion of prior to our lunch break, correct?

4 A. Right. And I think that it's Ivy, Cadman and
5 Paris, I think those are the cases. But I have
6 seen -- you have to understand, Mr. Jefferson, I
7 have seen Mr. Radbil and his lack of respect for
8 Judge Hoffman in state court and, frankly, to Judge
9 Boyle in this court. So I think he doesn't get the
10 duty that lawyers have to the Court.

11 And I know that Judge Hughes entered an order
12 for a 196,000-dollar sanction against him and the
13 law firm personally the day after our last hearing.
14 And it's my understanding that Mr. Radbil was the
15 primary attorney there. That tells me he did not
16 show respect to Judge Hughes as well.

17 THE COURT: Is that Judge Hughes or Judge
18 Hoyt?

19 MS. MALONE: That's Judge Hughes down in
20 Houston.

21 A. Judge Hoyt told him that he needed to stop
22 petty gamesmanship, and that was personal to
23 Mr. Radbil. He immediately turned around and filed
24 a motion directly related to that. If there were to
25 be something different than taking his Northern

1 District license, I think there would to be some way
2 that Judge Boyle could be comfortable that he would
3 learn some skills -- which I think he's capable of
4 doing, he passed the bar -- and that he would know
5 that lying to a judge is never okay. And lying to
6 opposing counsel is not great, but I'm more willing
7 to swallow that than lying to a federal judge.

8 Q. I appreciate your answer. And for the record,
9 I need to object as nonresponsive since I only asked
10 about Washington.

11 So returning to the Washington question, let me
12 just ask you: Do you have any personal knowledge of
13 the underlying facts of those Washington matters?

14 A. No, I just know what the judges said.

15 Q. So for example, were you aware of the fact that
16 the Washington cases were not Weisberg & Meyers
17 cases, those were actually -- or at least one of
18 them was a case where the Washington lawyers already
19 had it and then they sought to bring in
20 Weisberg & Meyers, or do you know one way or the
21 other?

22 A. I don't know. All I know is what the order
23 said was to identify them.

24 MR. JEFFERSON: Fair enough. Thank you
25 for your time, ma'am.

1 THE COURT: Thank you, Mr. Jefferson.
2 Mr. Meyers.

3 MR. MEYERS: May I have three minutes to
4 run to the restroom?

5 THE COURT: We will take a ten-minute
6 break.

7 (Recess taken from 3:19 to 3:26.)

8 THE COURT: Mr. Meyers.

9 MR. MEYERS: Thank you, Your Honor.

10 THE COURT: Ms. Malone is back up.

11 **CROSS-EXAMINATION**

12 Q. (By Mr. Meyers) Ms. Malone, I don't recall
13 whether it was during Mr. Martin's questioning or
14 Mr. Jefferson's questioning, but you talked about
15 the United States Supreme Court case that was
16 decided during this trial.

17 A. Yes.

18 Q. Okay. That's the Marx opinion?

19 A. I think the name of the case -- at this exact
20 moment, it escapes me. I apologize. It's the one
21 that said that if there's a Rule 68, that you can
22 recover fees from the other side and costs and also
23 left open the option for fees, but it definitely
24 gave costs to the other side.

25 Q. When you say, it gave costs to the other side,

1 you're aware that, prior to that opinion being
2 issued, that the Ninth Circuit had said no and that
3 the 7th Circuit -- or the 10th Circuit had said yes.

4 A. Honestly, I am not an expert on 9th Circuit
5 law. I don't regularly follow 9th Circuit; I tend
6 to stick closer to home, 5th Circuit mostly. I
7 don't doubt you, I just don't know.

8 Q. The reason I ask the question is, at the time
9 that the opinion came out, do you have any reason to
10 disagree there was a split in authority about
11 whether Rule 68 costs could be recovered in an FDCPA
12 action?

13 A. I think that the Rule 68 statute always
14 provided that to be at the discretion of the Court.
15 I think what that Supreme Court case said increased
16 your probability of getting it. I still think 68
17 said for a long time that it was at the discretion
18 of the Court. I think that was the rule. All that
19 that Supreme Court case did was sort of give the
20 green light to absolutely being cost, but it was
21 already in the rule that the Supreme Court was
22 interpreting.

23 Q. You will agree that the opinion says what it
24 says.

25 A. It says what it says. I don't remember.

1 Q. You had stated that, and I may not be phrasing
2 it correctly, but that this case was litigated over
3 the issue of attorney's fees or continued in
4 litigation over attorney's fees; is that right?

5 A. No. He asked me if that happens a lot of times
6 in cases like this. And I said, yes, sometimes they
7 do. I don't think we were talking about this one
8 specifically, we were just talking in general.

9 Q. Your Rule 68 offer here offered attorney's
10 fees, right?

11 A. Yes.

12 Q. You've read Dr. White's affidavit, you've read
13 the e-mails attached to it, and you just
14 acknowledged that your Rule 68 offered attorney's
15 fees. Do you think that the Rule 68 offer was
16 rejected because of attorney's fees?

17 A. I have no clue why Dr. White rejected it.

18 Q. So that means you don't have an opinion?

19 A. I don't know Dr. White. I don't know why he
20 rejected it.

21 Q. Okay. There was some conversation about the
22 chronology of demands here in this case.

23 A. Yes.

24 Q. You agree that prior to filing the lawsuit my
25 office sent two letters to your client without

1 knowing you represented them?

2 A. There were two letters that you produced
3 pre-litigation. My client didn't remember receiving
4 them. Debt collection companies get a lot of stuff,
5 but you did produce something that you said was
6 mailed to him. We are not denying that those were
7 sent pre-suit.

8 Q. Then a lawsuit was filed, and you did reach out
9 to us, correct?

10 A. Yes.

11 Q. And we responded that Dr. White did not have a
12 settlement demand at this time.

13 A. I don't think that's exactly what it said, but
14 I was told there was no demand.

15 Q. At this time it said, right?

16 A. I don't remember, Mr. Meyers. I'm happy to
17 read the e-mail for you if you like.

18 Q. It says what it says.

19 A. Right.

20 Q. And then shortly thereafter, I understand you
21 don't recall receiving an e-mail from Dennis, but in
22 January of 2012 there was a demand made; is that
23 right?

24 A. I still don't recall that. You're telling us
25 it was sent to us. I don't remember seeing it. As

1 I told you earlier, I think that hurts you more than
2 helps you. So if you want to say it happened, it
3 happened.

4 THE COURT: I think the question is
5 everything that's been offered. Is that somewhere
6 in all these documents, the offer?

7 MR. MEYERS: Yes.

8 THE COURT: Where?

9 MR. MEYERS: It is, amongst other places,
10 in the affidavit of Dennis Kurz.

11 THE COURT: I'm talking about an e-mail or
12 something, a letter.

13 MR. MEYERS: Yes, the e-mail, itself.

14 THE COURT: Mr. Radbil, you've got
15 lawyers. So if you want to talk about something,
16 hand it to your lawyers.

17 MR. MEYERS: Mr. Kurz's affidavit is --

18 THE COURT: I understand it's in Kurz's
19 affidavit. Just give me the exhibit where it would
20 be somewhere like in an e-mail or something.

21 MR. MEYERS: It is.

22 THE COURT: Give me the exhibit number.

23 MR. MEYERS: Document 142, Exhibit A.

24 THE COURT: Okay. Of your exhibits.

25 MR. MEYERS: No, Your Honor, just of

1 Mr. Kurz's affidavit. And then I believe it's in
2 the motion practice, as well, Your Honor.

3 MR. MARTIN: Docket entry 142.

4 THE COURT: Docket entry 142. Are you
5 still just talking about the affidavit?

6 MR. MEYERS: No, Your Honor. The E-mail
7 is attached as an exhibit.

8 THE COURT: All right. I have seen it.
9 At least I have seen the document and I have an idea
10 I have seen the e-mail. That's at 142. Okay.

11 MR. MEYERS: It is also in the motion
12 practice, Your Honor.

13 THE COURT: All right. Go ahead.

14 Q. (By Mr. Meyers) You -- Ms. Malone, I included
15 some e-mail exchanges between us in various cases in
16 our exhibits. Are you aware of that?

17 A. Yes.

18 Q. Okay. You have previously told me that I've
19 said to you that you could call me any time about
20 anything, right?

21 A. In the e-mails -- are you asking me if that's
22 in the e-mails? I have said that to you -- you have
23 said that to me. I don't know if it's in the
24 specific e-mails, Mr. Meyers. You have told me
25 that; I haven't done that, but you have told me

1 that.

2 Q. I don't say that you had any obligation to call
3 me at any time during this case, but did you call me
4 about any of the problems you had in this case?

5 A. I have had problems with Mr. Radbil off and on.
6 There's only one time that I actually reached out to
7 you about it, but it was not related to this case.
8 Mr. Radbil, for some reason, started referring to me
9 as Roberta in pleadings. And I got a call from the
10 Fifth Court of Appeals in Dallas, because they
11 couldn't identify me in the Court Texas Bar because
12 there is no Roberta Malone.

13 And I sent e-mails to you to tell Mr. Radbil --
14 I don't know why he did it, I've been called a lot
15 worse than Roberta, but that's not my name -- if he
16 would please call me my legal name, because my name
17 is not a nickname, that the Court would appreciate
18 it.

19 That's the only time I remember specifically
20 talking to you about Mr. Radbil. And that was more,
21 don't do this, the courts are getting ticked.

22 Q. I recall that exchange. Do you recall him ever
23 referring to you as Roberta after that?

24 A. No. Then he got onto this kick of wanting to
25 know my middle name. He got close, but didn't get

1 it quite right. I kept telling him, look, just
2 Robbie Malone. I don't even use my husband's last
3 name. Let's just go with what I've always been
4 called.

5 It was silly, to be honest with you. If it
6 hadn't been an irritant to the Court, I wouldn't
7 have said anything to you about it then.

8 Q. As you sit here today, Ms. Malone --

9 A. Wait. I have told you before -- I forgot. I
10 have complained to you in this case that Mr. Radbil
11 did not return my phone calls, and you did promptly
12 respond to me. And I said thank you for calling me
13 back.

14 Q. You did. That was after the trial.

15 A. No, actually, I think it was before, when you
16 were talking to me around Thanksgiving time. I
17 think I may have said, gosh, I'm really glad to hear
18 from you. Mr. Radbil doesn't respond to me about
19 this kind of stuff, and I'm happy to see that you
20 are looking at the case.

21 Q. Okay.

22 A. I think that's the first time, and I did
23 afterwards, too.

24 Q. Okay.

25 A. I did appreciate you calling me back.

1 Q. I don't suggest, as we sit here today, that I
2 could have been an aid to you in this case or to the
3 issues in this case, but I just need to be clear.
4 And I don't suggest to you that you had any duty to
5 contact me, but you didn't contact me if you called
6 Mr. Radbil repeatedly about the trial exhibits or
7 anything else to see if I could help.

8 A. Mr. Meyers, I did not. If you would like for
9 me to tell you why, I would be happy to.

10 Q. Again, I don't suggest you have a duty to.

11 A. I didn't, because in my dealings with you I had
12 the very strong opinion that you didn't want to hear
13 it.

14 Q. Okay.

15 A. That you thought I was tattling on your
16 associates if I said anything. So I didn't think it
17 was helpful to me, my client, or to Mr. Radbil for
18 me to tell you I didn't think this kid knew what he
19 was doing.

20 Q. When you said, this kid didn't know what he was
21 doing, prior to this trial Mr. Radbil had won a
22 federal court trial in front of Judge Sparks in the
23 Adamcik matter. Are you aware of that?

24 A. I had seen Mr. Radbil in trial myself, though,
25 and I had seen him in depositions. He never had

1 outlines, he never had notebooks; he didn't
2 understand the fundamentals.

3 In this case, when we took a break after
4 starting voir dire, Mr. Radbil asked me personally,
5 in front of his client, how to put his evidence on.
6 And I just said to him, I don't think my client
7 wants me to tell you how to try your case, and he
8 left.

9 I don't think he was doing it to be glib. I
10 honestly thought that he really thought that as an
11 older attorney that I would give him some advice,
12 which you can't do with your client standing there.
13 I really think he didn't know what he was doing.

14 Q. You are aware prior to this trial he had
15 succeeded in Adamcik before Judge Sparks.

16 A. Racehorse Haynes once said, you can lose a case
17 to a taxi cab driver. Stuff happens. That doesn't
18 mean he knew what he was doing.

19 Q. I understand.

20 A. It's not based on whether or not he won a
21 trial, Mr. Meyers. It's whether or not -- I have
22 lost trials where I have done very good work. I
23 have won trials when it was really not my best day.
24 It's whether or not he knew and understood the
25 fundamentals. I don't know what happened in the

1 Adamcik case. I know that what I saw was someone
2 who did not understand how to prepare a case and try
3 it in front of a jury. And I think that that was
4 because he was not being trained or supervised. I'm
5 sorry, but that's my opinion.

6 Q. I appreciate that. Thank you.

7 The reason I'm asking you the question is just
8 based on your conclusion that he wasn't being
9 supervised or trained. So I am just kind of asking
10 you to look at something from my perspective. Prior
11 to what occurred here, he had won the Adamcik trial.
12 Are you aware of that?

13 THE COURT: That's been established. It's
14 in the record. We talked about it at the last
15 hearing and the one before that.

16 MR. MEYERS: Okay. Thank you.

17 Q. (By Mr. Meyers) Are you aware, Ms. Malone,
18 that prior to the trial here, he had been certified
19 as adequate class counsel, along with my law firm,
20 in this court?

21 A. I saw that you filed that.

22 THE COURT: In this court. Okay. Let's
23 talk about that. Let's be clear on this, because
24 for some reason I think the last time you were here
25 you brought an order that I signed -- and I want to

1 be specific. Again, it's more of this misleading
2 way that you have of dealing with everything,
3 Mr. Meyers.

4 Judge Lynn had a case. She was out ill
5 for a period of time that particular summer, and all
6 of us took certain things and hearings on for her.
7 That's what that was, period. It was one hearing,
8 and the case went back to her.

9 So to infer, as you have with so many
10 things, that there was some stamp of approval of
11 behavior in a case by this Court prior to today is,
12 again, misleading and not true. All right?

13 MR. MEYERS: Yes, I'm terribly sorry, Your
14 Honor, and --

15 THE COURT: It was a settlement fairness
16 hearing, period. I did it for Judge Lynn, and
17 that's what it was about. Let's move on to the next
18 point.

19 MR. MEYERS: I'm sorry. I wasn't aware of
20 the circumstances.

21 THE COURT: Next point.

22 Q. (By Mr. Meyers) Prior to the trial here, you
23 and Mr. Radbil had tried the Brown v. Enterprise
24 case?

25 A. I think we had tried two cases before this one,

1 but that was one of them, yes.

2 Q. Okay. And the appellate court recently issued
3 an opinion remanding that case with a directive to
4 enter judgment on a TCPA claim?

5 A. It's already up on appeal to the Supreme Court.
6 And I think that that's a good example, Mr. Meyers,
7 that Mr. Radbil objected to the visiting judge, and
8 the Court of Appeals talked about his waiver because
9 he didn't understand the fundamental rules. That
10 one I'm not so critical of, because he also, in my
11 opinion, waived his right of appeal. And that one I
12 think the Supreme Court will rule in my favor on.

13 He didn't know how many jurors; he didn't know
14 how to put his evidence on. We objected on hearsay,
15 he didn't have sponsoring witnesses. He didn't have
16 any outlines. His clients were digging exhibits
17 out. But the real kicker to me, Mr. Meyers, was I
18 went to the ladies' room, and when I came back
19 Mr. Radbil was looking at my trial counsel book.
20 And in Tarrant County, that will get you in trouble
21 with the judge. Instead of bringing it to your
22 attention or to the Court, I told Mr. Radbil,
23 because he was a young guy, if I catch you at my
24 counsel table again, we will have a discussion with
25 the Court. To me that's not okay. You can win a

1 case or lose a case, it's how you do it that counts.

2 I'm on the defense side. I lose a lot of cases
3 where I'm only trying them on damages. You would
4 say I lost, my client would say I won, because
5 that's what happens on the defense side. I don't
6 look at that. I look at how he did it. He didn't
7 know how to try the case.

8 What the Court of Appeals said was that they
9 disagreed with the judge who dismissed everything on
10 directed verdict. That's a big deal, when you have
11 a judge who is Judge Holman, who was 35 years -- I
12 think 20 on the 2nd Circuit or the Second Court of
13 Appeals from Fort Worth, another 15 as a trial court
14 judge. Mr. Radbil told him he wasn't qualified to
15 hear the case, and that really did not set well with
16 the Court. You don't tell a judge who has that many
17 years of experience he's not qualified to hear what,
18 in his opinion, was a fairly routine case.

19 Q. What you just said about being at your table,
20 you have never told me that before, right?

21 A. No, I have not. I didn't want to tattle on
22 him. It wasn't my job, Mr. Meyers. You seemed to
23 have, in my opinion, endorsed Mr. Radbil all along,
24 and I really didn't think you wanted to hear it, so
25 I never told you.

1 The truth is, if it had been someone from
2 Mr. Jefferson's firm, which I know his firm pretty
3 well, I would have called up a partner over there
4 and said, hey, look, you have a kid over there that
5 just did something bad. I didn't rat on him to the
6 judge, but you need to talk to him. I don't have
7 that same feeling from you.

8 Q. I included as exhibits various e-mails between
9 us.

10 A. You mentioned that, yes.

11 Q. In these e-mails, you don't ever tell me these
12 things that you tell me now, that you think so lowly
13 of me.

14 A. I'm talking about his lack of supervision,
15 Mr. Meyers. It's not personal. I think as
16 attorneys we have an obligation to make sure that
17 the attorneys who work under us are given a fair
18 training and fair opportunity to do that.

19 Until this trial started, until this sanctions
20 hearing started, I didn't know if it was Mr. Radbil
21 or if it was you. After the first day, when I saw
22 your examination of Mr. Radbil and you took him down
23 the line of the rogue client and your questioning of
24 him, then my opinion was -- before that, I thought
25 it was mostly Mr. Radbil. That day I decided, you

1 know what, he's been given some really bad advice.
2 And frankly, I don't know who trained you, I know
3 that you're a younger attorney than I am, but
4 something's wrong in the tree if you guys think this
5 is okay.

6 And my impression is that, the fact that you
7 had Mr. Radbil represent you the very next day in a
8 hearing in front of Judge Hughes, where you had
9 Mr. Radbil take lead in front of Judge Hughes the
10 very next day after Judge Boyle talked to you about
11 whether or not you endorsed his behavior, tells me
12 that you haven't learned anything about this
13 process, and that is a concern for me. It's not
14 personal, it's for the profession.

15 Q. You're speculating as to my mindset, right?

16 A. I don't know what your mindset is. All I know
17 is what I have seen. And what I have seen is that
18 Mr. Radbil has been put in a position where he was
19 not qualified to do what he was doing. And if that
20 was his own making, then it was Mr. Radbil's fault.
21 If it was yours as his lead attorney, then it was
22 your fault.

23 Q. Can you tell me, Ms. Malone, as we sit here
24 today, all of your non-client colleagues that have
25 told you that I'm a liar, dishonest, deceptive,

1 misleading?

2 A. Oh, colleagues. You mean attorneys?

3 Q. Sure.

4 A. Why? I guess I'm going to have to --

5 MR. MARTIN: Objection, relevance.

6 THE COURT: Well, if you have -- if you
7 know some lawyers or nonlawyers, go ahead. He's
8 asked the question.

9 A. Okay. A number of members of the Map List have
10 questioned your trustworthiness. I can't remember
11 all their names. A couple of guys from Washington
12 State have talked about the fact that they believe
13 that you have lied to the Court, and I'm afraid I
14 only know them by face. I don't actually know their
15 full names. We were just having a beer, and they
16 told me the story.

17 I've heard from --

18 Q. Can you tell me the name of any of these
19 people?

20 THE COURT: No, no, we're not going to do
21 this, Mr. Meyers. Move on. All right?

22 MR. MEYERS: Yes.

23 THE COURT: Are you just going to get a
24 little hit list there and start calling them, is
25 that what this is about? I don't understand this.

1 Go ahead and ask your next question.

2 MR. MEYERS: Yes, Your Honor.

3 Q. (By Mr. Meyers) Can you point to the lies that
4 I have told in this case in your view?

5 A. In my view?

6 Q. Yes.

7 A. I think it was a lie when you told the Court
8 that the testimony related to the 40,000 to 5,000
9 was a result of a rogue client. Because that is
10 certainly not what Mr. Radbil said, and that was
11 certainly not what Dr. White said. And then for you
12 to later say you never say rogue client, which you
13 have said a couple of times, that was not true.

14 I think you lied when you told the Court that
15 you were not soliciting Texas clients. Because two
16 weeks before the hearing, on your Twitter account
17 you were saying that Texas clients deserve Texas
18 size representation. Two weeks after you told the
19 Court that you were not going to sign up any new
20 Texas clients and that, if you do, you would be
21 handling them personally, you file a pleading that's
22 not there. I think that was a lie. I'm sorry, but
23 I do.

24 I think your website contains flat-out lies. I
25 think the information about the Guajardo case was a

1 lie. I think the information about the Whaley case
2 on the website was a lie. I think most of the
3 representations about Mr. Radbil's experiences were
4 not true. I don't think that he was the lead
5 counsel in the NCAA case. I don't think he was the
6 lead counsel for a major league baseball player.

7 I do believe you when you said that you didn't
8 actually check those representations. But whenever
9 you, as a member -- as a founding partner of a firm
10 puts that information out to the community, then you
11 are responsible for that.

12 I'm sure there are many more things. Those are
13 just the two things that came to mind as I sat here.
14 There are things that you have said, Mr. Meyers, in
15 the course of the hearing last time that I found not
16 to be credible.

17 When you said -- there were some things you
18 said I thought were incredibly candid, but they were
19 not good lawyering. When you said you don't talk to
20 witnesses before you put them on the stand. I
21 believed you when you said it, because that made a
22 whole lot of sense to me, when working with
23 Mr. Radbil, but I think that was bad lawyering.
24 That wasn't a lie, that was just bad lawyering.
25 There are other things I would take issue with. I

1 don't have a list. I didn't make one, I'm sorry.

2 Oh, I also think it was a lie when you told the
3 Court that you would not recommend Mr. Radbil to a
4 family member, because the very next day you walked
5 into Judge Hughes court, and it's my understanding
6 Mr. Radbil took lead on that hearing. If that's
7 true, then that was a lie. You do endorse him.

8 THE COURT: Is that true? Did Mr. Radbil
9 take the lead on that?

10 MR. MEYERS: He did not, Your Honor. But
11 Judge Hughes did ask the other Mr. Radbil to sit
12 down and for this Mr. Radbil to stand up.

13 THE COURT: This Mr. Radbil that we have
14 here in court today, Noah?

15 MR. MEYERS: Judge Hughes asked that, yes.

16 THE COURT: So what does that mean? Did
17 he do the talking?

18 MR. MEYERS: At Judge Hughes' direction,
19 when Judge Hughes told the other Mr. Radbil to sit
20 down.

21 THE COURT: So he did take the lead.

22 MR. MEYERS: No, he didn't. The other
23 Mr. Radbil started talking. Then at some point
24 during the hearing, Judge Hughes said to Aaron
25 Radbil, I want to hear from Noah Radbil.

1 THE COURT: So Noah Radbil, if not the
2 lead, was the co-lead.

3 MR. MEYERS: Well, he was named in the
4 sanctions motion, Judge.

5 THE COURT: Ms. Malone, when you say take
6 the lead, tell me about that.

7 MS. MALONE: Well, it's my understanding
8 from Mr. Patterson, because I wasn't there, but
9 Mr. Patterson told me that Noah Radbil argued the
10 majority of the time. He said that essentially the
11 hearing went like two-and-a-half, three hours and
12 that the vast majority of the time was Noah Radbil
13 arguing directly with Judge Hughes. That's what he
14 said.

15 THE COURT: And is that -- how did that --
16 what was that hearing about? What was the
17 sanctions? What was the sanctions?

18 MR. MEYERS: 1927, Your Honor.

19 THE COURT: Okay. And what were the
20 accusations?

21 MR. MEYERS: That Mr. Radbil --

22 THE COURT: Did he say Noah or Aaron?

23 MS. MALONE: Both.

24 MR. MEYERS: Both of them were alleged
25 to -- I have the transcript. I can give it to the

1 Court.

2 THE COURT: Just tell me, because you
3 brought it up. Tell me about it.

4 MR. MEYERS: That basically we lied to the
5 Court.

6 THE COURT: Okay. And did the Court end
7 up agreeing and sanctioning them both?

8 MR. MEYERS: No. The Court sanctioned
9 Mr. Noah Radbil and applied it to the firm, as well.

10 THE COURT: For how much money?

11 MR. MEYERS: \$195,000.

12 THE COURT: Has it been paid?

13 MR. MEYERS: No, it has not, Your Honor.

14 THE COURT: What is the alleged lie that
15 was supposedly told?

16 MR. MEYERS: There were several
17 allegations of lies. It revolves around a defect in
18 a car and what caused the defect.

19 THE COURT: Just give me an idea. What
20 were some of the lies that Judge Hughes believed
21 occurred?

22 MR. MEYERS: Well, I don't know, Your
23 Honor, that Judge Hughes, during the hearing, said
24 that there were lies, Judge.

25 THE COURT: What were the lies? What were

1 the accusations, Mr. Meyers? You know what I am
2 asking you. Answer the question. What were the
3 statements that Judge Hughes believed were lies?

4 MR. MEYERS: I don't know the answer to
5 that, Your Honor.

6 THE COURT: See, I think that's not true.

7 MR. MEYERS: Okay.

8 THE COURT: Were you there at the hearing?

9 MR. MEYERS: Yes.

10 THE COURT: But you don't know what the
11 lies were. You got a 100-something-thousand dollar
12 sanction by someone, who is at least associated or
13 was associated with your firm, who argued at the
14 hearing, and you don't know what the lies were.

15 MR. MEYERS: Judge Hughes did not speak
16 about lies primarily.

17 THE COURT: You read the papers, didn't
18 you?

19 MR. MEYERS: I'm sorry?

20 THE COURT: You read the papers?

21 MR. MEYERS: I did, Your Honor.

22 THE COURT: What do the papers say?

23 MR. MEYERS: The papers filed by the
24 defendant talked about lies in the defects in the
25 car.

1 THE COURT: All right.

2 MS. MALONE: Your Honor --

3 MR. MEYERS: They also talked, Your Honor,
4 about bringing a claim late past the statute of
5 limitations.

6 THE COURT: Mr. Meyers, this is
7 unbelievable that someone like you is out in the
8 public practicing law and presenting yourself as an
9 attorney and counselor and taking money for that. I
10 don't know how you or your firm or Mr. Radbil, for
11 that matter, is even retaining clients at this point
12 without telling them about all of this, let alone
13 soliciting new clients. It seems, at a minimum,
14 some sort of deceptive trade practice, if not out
15 and out fraud.

16 I don't -- I've never seen anything like
17 this in 30 years, the prevarication by you and
18 Mr. Radbil. It's just -- it's almost impossible to
19 believe anything you say and what you just said is
20 just another example of that.

21 This notion last time that you -- that you
22 don't ever talk to your witnesses before they
23 testify, I think you probably want to go ahead and
24 tell your clients that, especially these major
25 league baseball player types that might expect that

1 you are going to prepare for trial.

2 Anyway, let's move back. Ms. Malone, what
3 else did you have on that topic, and then we will
4 move to the next one?

5 MS. MALONE: The only thing, Your Honor,
6 is you asked what the allegations were, and I was
7 just going to tell the Court that the Scarlott case
8 is the one we were talking about. Under RAB's
9 Exhibit Number 16 is the allegation being made by
10 Nissan as to what the lies were. It certainly
11 doesn't reflect what Judge Hughes thought.

12 And then for the Court's notice, we added
13 as Exhibit Number 44, which was one of the late
14 exhibits we had, Your Honor, and that is the final
15 order issued by Judge Hughes for the
16 190-something-thousand dollars, and that's all I was
17 going to say.

18 THE COURT: Thank you.

19 Mr. Meyers, let's go to your next
20 question.

21 MR. MEYERS: Thank you, Your Honor.

22 Q. (By Mr. Meyers) Ms. Malone, at the first
23 sanctions hearing, you were just talking about the
24 rogue testimony. On page 142, lines 4 through 9.

25 A. Okay. You said, it was kind of rogue.

1 Q. And then I said, I'm not finding a fault with
2 him, right?

3 A. Doesn't matter. When the Court asked you about
4 it, you continued to suggest that it came out of the
5 blue and you didn't know it was coming. That was
6 very much consistent with you calling it a rogue
7 thing. And then, for you to later say you never
8 used the word rogue was just wrong, which is what
9 you said when you were on the stand the other day.

10 To me, that's not the real problem here,
11 Mr. Meyers. You asked me for an example of
12 something you had said that I found to be a lie, and
13 that was an example. That is not the thing I am
14 most offended by, by any means.

15 Q. As we sit here today, when I said I am not
16 finding fault with the client, do you think I tried
17 to blame the client?

18 A. I think you absolutely tried to blame the
19 client. I think it's just like when you absolutely
20 tried to blame your webmaster for the Twitter pages.

21 Q. Okay. The various orders that you included and
22 that you cite, the few not so favorable fee
23 opinions, the few orders that were orders to show
24 cause that were discharged, did you research those
25 cases yourself?

1 A. To be honest, Mr. Martin took the lead on that,
2 but some of them I have seen other places. I think
3 in our exhibits we only had show cause orders, but I
4 think we did have a passing reference to the other
5 in our other motion.

6 Q. Did you just ask other defense lawyers to give
7 you all of the bad stuff they had on
8 Weisberg & Meyers?

9 A. No, I did not just do any one thing.
10 Mr. Meyers -- honestly, Mr. Martin Googled Noah
11 Radbil, and the Washington orders popped up on
12 Google.

13 Q. Okay.

14 A. But I mean, yeah, did other defense attorneys
15 give me stuff? Sure. I have seen other stuff.
16 Obviously I obtained a copy of the Scarlott order
17 from Jeff Patterson. He sent it to me after it was
18 issued. I didn't ask him to, particularly, but he
19 did give it to me. He knew I would be looking for
20 it.

21 Q. You have been monitoring the Scarlott case, I
22 assume?

23 A. No, I have not. Nissan doesn't pay me; I don't
24 have time to go monitor it. Something happens from
25 time to time, and we might look at it. And that

1 would normally be a heads-up from either something
2 you filed or from something that Mr. Patterson
3 mentioned to me, but I honestly have not. I think I
4 have read one pleading in the Scarlott case, which
5 would be the one that's included in our thing in the
6 order. I didn't even read your response to it.

7 Q. Mr. Patterson presented an e-mail that Dennis
8 Kurz sent you that you sent to Mr. Patterson about
9 representations about telling me that the case was
10 not a good case after the deposition. Do you recall
11 that?

12 A. I wasn't there when Mr. Patterson -- I wasn't
13 at the hearing, so I don't know what Mr. Patterson
14 did. I know you have told me he did that.

15 Q. Do you recall the e-mail, Ms. Malone?

16 A. You put it as one of your exhibits. I don't
17 remember what it specifically says. I think I
18 didn't say anything. All I think is that it was
19 just forwarded, the e-mail that I received, from one
20 person to another person without comment.

21 Q. That's right. It's Exhibit 32. I'm just
22 confirming that Dennis Kurz sent you an e-mail,
23 former employee of mine, and you forwarded it to
24 Mr. Patterson, right?

25 A. I forwarded an e-mail to Mr. Patterson, yes. I

1 don't know if you were Of Counsel with Mr. Kurz or
2 not. I don't know the exact situation that you guys
3 have going on. I'm not denying that he's your
4 former employee, I just don't know.

5 Q. And Exhibit 33 -- strike that.

6 The e-mail that Mr. Kurz sent you was from
7 August of this year; is that right?

8 A. I'm sorry, which exhibit?

9 Q. 32.

10 A. 32 or 33?

11 Q. 32.

12 A. Okay. I'm sorry. I'm having a hole punch
13 problem here.

14 The e-mail Mr. Kurz sent to me was dated
15 August 30th.

16 Q. Of this year?

17 A. Yes.

18 Q. Okay. And have you read it?

19 A. I read it before, but if you want me to skim
20 it, I will be happy to.

21 Q. Sure.

22 A. Sure. I just re-read it.

23 Q. It relates to Dennis', Mr. Kurz's, supposed
24 opinion of the case and what he supposedly told you,
25 right?

1 A. This is what Mr. Kurz told me about the case?

2 Q. Yes.

3 A. He sent me an e-mail telling me that he had
4 been called to federal court. And he's complaining
5 about what happened and that he had recommended you
6 drop the case, I think he said the word begged, and
7 that the plea was shot down and the case was given
8 to the brothers, Radbil.

9 Q. Did you have the opportunity to read
10 Exhibit 33?

11 A. You sent me Exhibit 33 -- you sent me the
12 attachments to Exhibit 33 over the weekend after
13 that hearing. And I looked at it then, and Mr. Kurz
14 in that e-mail says something different. I didn't
15 use either e-mail, so I don't have a -- I don't have
16 a dog in that fight, Mr. Meyers. I don't know if
17 it's true or not. I didn't see the case, I didn't
18 see the information. All I did was send something
19 to a defense attorney who I knew was working on the
20 case and said, here you go. I didn't know he was
21 going to use the e-mail from Mr. Kurz. I had no
22 clue. He didn't ask my permission, not that he had
23 to, but I certainly didn't know it. And I would
24 have personally probably not used hearsay on hearsay
25 e-mail as evidence in a hearing myself, but that's

1 just me, because that's what this is. It's a
2 statement from Kurz just forwarded without comment
3 from me to Patterson. I have no clue if what Kurz
4 is saying is true or not. Nor do I have any clue of
5 whether the e-mail you have is true or not, I don't
6 know. I really don't one way or the other. And I'm
7 not suggesting that either side is right, because I
8 really truly don't know.

9 Q. You would agree that the e-mail that Mr. Kurz
10 sent you versus the e-mail that he sent me
11 three-and-a-half years prior are completely
12 different.

13 A. Completely different. I don't know the context
14 of them, but I could read that the e-mail that you
15 submitted was referring to a Rule 11 or some sort of
16 sanction motion offer at that time. And so I don't
17 know if he was referring to the demand that was
18 being made before there was a problem with the tech,
19 or if it had to do with the whole case. And I don't
20 know, because I didn't know -- I don't have any
21 context for it.

22 But I'm not -- but it had a question in my
23 mind, and I wasn't sure even what was going on. And
24 I really don't know, Mr. Meyers. I'm just telling
25 you, it's not clear to me -- if they are

1 contradictory, it's not clear to me what they are
2 both referring to.

3 All I know is that I gave the e-mail to
4 Mr. Patterson because I thought it might be helpful
5 to him, and that's all I did.

6 Q. I understand that. Do you -- do you think that
7 my testimony was -- that you should have told me
8 that the websites were wrong?

9 A. Well, you basically said that you wish I had
10 told you that the websites were wrong. Or -- yeah,
11 you did. And I think the judge said how dare I --
12 sarcastically, how dare she not tell you the
13 websites were wrong.

14 But I did. I told you that information about
15 the Whaley site was wrong on your website, and you
16 didn't take it down, not at that time you didn't.
17 So that's why I thought that that was -- your
18 statement that, had you known it you would have
19 corrected it, that's why I didn't believe it.

20 Q. I'm just unclear on your answer. Did I say
21 that you should have told me about the website?

22 A. You know, I don't know if you said should have
23 or wished I had. All I know is that the one time I
24 did tell you about information on your website being
25 wrong, you did not take it down. So frankly it

1 didn't matter one way or the other.

2 Q. I sent a letter to the bar asking their
3 opinion, right?

4 A. Right. But you admitted on the stand that that
5 description of that case was probably not accurate.

6 THE COURT: Is that the website, the AFC,
7 or something else?

8 MS. MALONE: That would be Mr. Radbil's
9 bio, Your Honor.

10 THE COURT: Which would be what website?

11 MS. MALONE: On the firm website. It's
12 Exhibit 37, Your Honor.

13 THE COURT: Yes, I have it. Okay. So you
14 actually did think -- did you screen this at all
15 before it went up, Mr. Meyers, Defense Exhibit 37?

16 MR. MEYERS: I don't recall, Judge. It
17 was so long ago.

18 THE COURT: Okay. But you think that
19 would be a good practice, an ethical practice to
20 screen the public postings about young attorneys
21 that are associated with your firm? Do you think
22 that would be a good practice?

23 MR. MEYERS: Yes, yes.

24 THE COURT: Okay. So someone who is only
25 out of law school since 2009, as I recall, late 2009

1 if I'm right, if not, it was late '08, did you think
2 it was a surprise that he would have been
3 representing a major league baseball player in a
4 seven-figure breach of fiduciary duty case?

5 MR. MEYERS: We spoke about this last
6 time, Your Honor. I just relied on people to write
7 an accurate bio.

8 THE COURT: But you're a lawyer, and you
9 didn't have a little question in your mind about the
10 accuracy of that?

11 MR. MEYERS: I didn't, Your Honor.

12 THE COURT: Was it naiveté, is that what
13 it was?

14 MR. MEYERS: It's assuming, Judge, that
15 people tell the truth.

16 THE COURT: Okay. But it also takes on
17 the responsibility of being part of that
18 communication to the general public.

19 And what about the -- the one with regard
20 to the NCAA players against -- Mr. Radbil was
21 amongst a group of several lawyers representing a
22 group of former NCAA Division I athletes. I don't
23 know when this was posted, but he couldn't have been
24 out of law school more than a couple of years. Did
25 you not think that was strange?

1 MR. MEYERS: Given where he worked, Your
2 Honor, I really didn't think that.

3 THE COURT: Let's talk about that, where
4 he worked. I haven't asked you yet why, but I'm
5 asking you this because you're raising these
6 questions with Ms. Malone, and I want to get to the
7 bottom of this. How did you come upon Mr. Radbil?
8 He was at a bigger firm, a successful firm, is that
9 what it was?

10 MR. MEYERS: I came upon --

11 THE COURT: I know how you came upon him,
12 I think you testified to that. But what do you know
13 about his activity at this other firm?

14 MR. MEYERS: Well, I know just a couple of
15 things, Your Honor.

16 THE COURT: What's the name of the firm?

17 MR. MEYERS: The firm where he was before
18 he joined us is Camaro Sibley.

19 THE COURT: And there was one other one.

20 MR. MEYERS: AZA, yes, Your Honor.

21 THE COURT: And do those lawyers and those
22 partners in that firm endorse Mr. Radbil to this
23 day?

24 MR. MEYERS: I haven't spoken to them,
25 Your Honor.

1 THE COURT: Do you have any idea? If they
2 were to come down here and talk about this, that
3 they would endorse his representations that
4 obviously occurred when he was with their firm?

5 MR. MEYERS: When I was in town, Your
6 Honor, for a trial that I was pro hac vice in the
7 Southern District, we went to dinner with
8 Mr. Camara and Mr. Sibley from that firm, a couple
9 other lawyers from that firm, Mr. Ahmad from AZA,
10 and there were a handful of other lawyers there,
11 Your Honor. Everything seemed good, but that was
12 the only time that I've ever met Mr. Ahmad --

13 THE COURT: Okay. You've answered my
14 question. Let's go on with the questioning.

15 Q. (By Mr. Meyers) As we sit here today,
16 Ms. Malone, are you aware that one of the questions
17 you asked me about my website was that a judgment --
18 or a Newswire that a judgment wasn't entered for
19 Mr. Masters against Wells Fargo, as we sit here
20 today do you know that a judgment was entered?

21 A. I don't think that's what my argument with you
22 was. My argument was that the Newswire article
23 implied that you had won a big judgment when, in
24 fact, you got a 13,000-dollar judgment that
25 basically Judge Sparks said, either you take it or

1 else. It wasn't a win.

2 I mean a judgment was entered, but when you
3 read the case from Judge Sparks, it was not a big
4 victory. And the problem was the news article
5 implied something different than what had actually
6 happened when you read Judge Sparks' opinion, who I
7 happen to know by the way, from my old med-mal days.
8 So I took that very seriously what he said.

9 Q. As we sit here today, you have read Dr. White's
10 affidavit. Do you think what he wrote in his
11 affidavit, that we didn't tell him to say a number,
12 do you think that's true or not true?

13 A. I know what he testified -- I re-read his
14 testimony to the Court. And what he said -- two
15 things: He said that he was never told about the
16 consequences of the offer of judgment. He said that
17 very specifically to Judge Boyle.

18 And a few pages later he said that he had been
19 assured by Mr. Radbil that the damages would be
20 offered into evidence. I can get you the cites. He
21 very specifically said that. And on his own, it was
22 not questioning from the Court or from me, he
23 apologized to the Court for sandbagging and said he
24 had been assured from Mr. Radbil that those damages
25 numbers would come into evidence.

1 Now, when I read his declaration, I see there
2 is a direct contradiction to the statement about
3 being told about what the Rule 68 offer made. I
4 don't know which one is right. I know they are
5 inconsistent.

6 When I read the question about the testimony,
7 there's nothing in his declaration that specifically
8 states that he was not told that the damages amounts
9 would not be awarded. What the declaration says
10 very carefully is that he was told they would not
11 ask the jury for a specific amount. I took that to
12 be possible that he understood that Mr. Radbil would
13 not ask for a dollar amount in closing.

14 I don't know how -- how to explain those two
15 things. One is directly contradictory; the other
16 one may not be. I think the only person who can
17 explain that is Dr. White, but I know what he told
18 Judge Boyle. And I also am curious why Dr. White
19 was not here to explain it himself, but that's just
20 me.

21 THE COURT: Why is that, Mr. Meyers?

22 MR. MEYERS: Your Honor, it states in the
23 affidavit why he wasn't here that day. You would
24 have to ask him.

25 THE COURT: You tell me, because you

1 questioned him. You said you prepared part of those
2 paragraphs. Why didn't he come here to explain all
3 of those things?

4 MR. MEYERS: He had a prior business
5 engagement.

6 MS. MALONE: That was October.

7 THE COURT: Is there any reason why he
8 wouldn't be able to come down to explain all of this
9 in person after the conflict it seems that there is
10 between his affidavit and his statements to the
11 Court?

12 MR. MEYERS: I couldn't speak for him. I
13 don't see why not.

14 THE COURT: Have you spoken to him today?

15 MR. MEYERS: I have not.

16 THE COURT: Has Mr. Radbil spoken to him
17 today, to your knowledge?

18 MR. MEYERS: I have no idea.

19 THE COURT: All right.

20 MS. MALONE: I did have one other
21 question, which probably can be explained away by
22 Mr. Jefferson. At least in the exhibit that we were
23 given for the declaration, the signature page is in
24 a completely different format than the actual body
25 of the thing. It may have to do with what he was

1 explaining about the e-mailing. But it is not a
2 continuous document, and he may can explain that.
3 And I didn't -- I think we may have generally
4 objected to that, but we made some general
5 objections, but they are different and I don't know
6 why that is. I think that Dr. White would be the
7 best person to ask.

8 Q. (By Mr. Meyers) Do you think, Ms. Malone,
9 people who are being collected by debt collectors,
10 do you think they have money to hire an attorney as
11 a rule?

12 A. I have seen the rare occasion when they do.
13 But as a general rule, they probably don't, because
14 that's why they are being collected on in the first
15 place, but there have been some that do. I would
16 say 95 percent the other way, though.

17 Q. So I assume you don't object to me taking the
18 cases on a fee shifting provision, you object to me
19 asking that the client see that my bill gets paid if
20 he settles; is that right?

21 A. Mr. Meyers, I have no problem with plaintiffs'
22 attorneys filing suits. I'm a defense attorney. If
23 you don't file suits, I don't have work. But I do
24 think you have to do it ethically and you have to do
25 it fairly, and that's my objection. But I don't

1 have a problem in general.

2 I understand. I'm a med/mal -- I used to do a
3 ton of med-mal defense. I have one med-mal case
4 right now because plaintiffs' lawyers aren't allowed
5 to file them. I understand that if you don't exist,
6 we don't work. I have no general problem with the
7 practice of law.

8 Q. You included part of the ethical rules as an
9 exhibit?

10 A. Yes, I did, just for ease of reference.

11 Q. When you say, ease of reference, what do you
12 mean?

13 THE COURT: Mr. Meyers, I'm not sure where
14 all these questions are going, but it seems that you
15 are up here quite a bit just sort of, I don't know,
16 passing time or buying time. I'm going to give you
17 five minutes, so use your best questions. You've
18 had her since 3:25, and it's going to be an hour
19 here pretty soon, so. . .

20 A. We were going to be talking about them, so I
21 put them in as exhibits so that we would be able to
22 refer to them, and I think I actually had you look
23 at some of them during the course of examination.
24 So by ease of reference, I just thought it was
25 easier for us, than to guess what the rule said, we

1 would have it to look at. That's what I meant.

2 Q. Do you believe that the rules are standards for
3 procedural decisions?

4 A. I'm sorry. Standards for the federal court?

5 Q. For procedural decisions, yes.

6 A. I don't guess -- if you're talking about 1937,
7 I don't think that this -- to Rule 37, I don't think
8 they have a direct application to that.

9 THE COURT: Now I know you're buying time.
10 Let's ask some real questions. Let's ask some
11 questions.

12 MR. MEYERS: Your Honor, thank you for
13 allowing me the time up here.

14 THE COURT: Any other questions that you
15 have? Let's make sure I know what they are, if you
16 think you've been cut off. Tell me where else you
17 want to go, and I will let you know if I think
18 that's a waste of time or not. Anything else?

19 MR. MEYERS: Not at this time. Thank you,
20 Your Honor.

21 THE COURT: All right. We started this
22 with Mr. Martin. I'm assuming there's no follow-up.

23 MR. MEYERS: No.

24 THE COURT: Go ahead, Ms. Malone, you can
25 step down.

1 Ms. Malone, as far as your evidence goes
2 in this sanctions hearing, where are we?

3 MS. MALONE: We rest, Your Honor.

4 THE COURT: Mr. Jefferson?

5 MR. JEFFERSON: Yes, Your Honor. As the
6 Court noted and I think wanted, Mr. Suazo is going
7 to present him, but we will call Mr. Radbil back to
8 the stand. He's been previously sworn.

9 THE COURT: Mr. Radbil is still under
10 oath. Come on back up here.

11 MR. RADBIL: Thank you, Your Honor.

12 MR. SUAZO: Your Honor, there are a number
13 of notebooks up there. I have given one to
14 Ms. Malone, and I have tried to synthesize
15 everything into one notebook, if I can give it to
16 the Court. I'm not offering this.

17 THE COURT: I know you're not, but we have
18 spent quite some time organizing exhibits over the
19 last few days so that I know where everything is.
20 Are they plaintiff's exhibits, Radbil exhibits?

21 MR. SUAZO: They are Radbil exhibits, RAB
22 exhibits, documents referenced in the motions.

23 THE COURT: That's fine. But I can find
24 them, because I know where everything is. I would
25 just as soon not have another notebook up here, but

1 I appreciate your attempt to streamline. I think I
2 can probably find it pretty quickly.

3 MR. SUAZO: May I approach the witness?

4 THE COURT: Just make sure it's clear
5 which party's exhibit you are dealing with --

6 MR. RADBIL: I will be happy to --

7 THE COURT: Mr. Radbil, I know it's hard
8 for lawyers not to talk when you have a lawyer, but
9 you've got to let your lawyer talk.

10 MR. RADBIL: I'm sorry, Your Honor.

11 MR. SUAZO: May I proceed, Your Honor?

12 THE COURT: Go ahead.

13 MR. JEFFERSON: I don't want the
14 proceedings to stop. May I be excused for a moment?

15 THE COURT: You may.

16 **NOAH RADBIL,**
17 having been previously sworn, testified as follows:

18 **REDIRECT EXAMINATION**

19 Q. (By Mr. Suazo) Mr. Radbil, are you employed at
20 the moment?

21 A. I am not employed.

22 Q. You're not drawing a salary or health insurance
23 benefits or anything like that?

24 A. No. My health insurance was recently canceled.

25 Q. We have a lot of stuff that's been discussed,

1 and I'm going to try to zero it in, at least,
2 because I know the Court has suggested that we focus
3 on the proceedings in this case a couple of times.
4 So I'm going to try to start out with the
5 proceedings in this case.

6 First of all, did you do the initial intake on
7 this Dr. White case?

8 A. No.

9 Q. Did you sign the fee agreement with Dr. White?

10 A. No.

11 Q. Did you make the initial demand letter?

12 A. No.

13 Q. Did your name appear on the original complaint
14 in this case when it was filed on July 28th, 2011?

15 A. Did not.

16 Q. Who was the attorney in charge on this case?

17 A. Originally, Dennis Kurz.

18 Q. Why did Mr. Kurz cease being the attorney in
19 charge of this case?

20 A. He quit.

21 Q. When did he quit? Do you remember roughly the
22 approximate time frame?

23 A. Yes. The approximate time frame was when I
24 appeared as counsel in this case.

25 Q. Would that be sometime around August of 2012?

1 A. Yes.

2 Q. And when Mr. Kurz left the firm, how many other
3 attorneys do you remember there being at
4 Weisberg & Meyers that were licensed in Texas?

5 A. To my knowledge, I was the only one licensed in
6 Texas for the last two or so years. I think there
7 was one lawyer who lasted a month and a half or so,
8 perhaps longer, but basically me.

9 Q. How many cases do you approximate that you then
10 had to take over as counsel when that happened?

11 A. On a temporary basis, it was the Texas cases,
12 which amounts to probably 100 or more.

13 Q. And you were licensed when? What year were you
14 licensed?

15 A. December of 2009.

16 Q. So roughly July 2012 as a lawyer that had just
17 completed maybe 18 months of practice, you were then
18 listed as the attorney of record for nearly 100
19 cases. Is that fair?

20 A. If not more, yes.

21 Q. Was this one of those cases, that Dr. White v.
22 Regional Adjustment Bureau case?

23 A. This was one of those cases.

24 Q. All right. Let's focus, if we could, on the
25 pretrial components of this case and the pretrial

1 components of the motion before getting into some of
2 the more specific complaints.

3 Do you understand that RAB is making the claim
4 that you multiplied the proceedings unreasonably and
5 vexatiously?

6 A. I understand.

7 Q. Have you reviewed the docket sheet recently to
8 prepare yourself to come testify?

9 A. I have.

10 Q. How many people did you depose in the 18 months
11 that this case pended before the Court?

12 A. One person.

13 Q. How many sets of written discovery did you or
14 the law firm serve in this case in connection with
15 the claim that there was some unreasonable vexatious
16 and multiplying of the proceedings?

17 A. I believe one set.

18 Q. How many motions did Weisberg & Meyers file for
19 Dr. White in the total 18 months that this case was
20 pending before the Court?

21 A. Eight motions, i believe.

22 Q. Let's just kind of briefly run through them,
23 not spend a lot of time on them. The first one is
24 docket entry number 9, September 14, 2011. There
25 was a motion to extend time for a Rule 26f

1 Conference filed by the firm before you appeared in
2 the case. Do you know what the result of that
3 motion was?

4 A. It was granted.

5 Q. On July 22nd, 2012, docket entry number 32,
6 there was a motion for leave to file under seal a
7 motion to compel a second deposition and a motion to
8 compel a second deposition, all filed kind of
9 simultaneously. Tell us why you filed that
10 combination of motions and what the disposition was.

11 A. I didn't want to allow anything to distract
12 from the discovery obstruction that I saw and that I
13 wanted to communicate to the Court. So out of an
14 abundance of caution and to protect the proprietary
15 or confidential information of the defendant, I went
16 ahead and filed it under seal.

17 The standards were not particular enough, and
18 Judge Kaplan, I believe, denied the motion to seal
19 and struck the motion to compel and refused to allow
20 any further motions relating to discovery without a
21 conference, which we soon scheduled and held.

22 Q. Was there a protective order in the case at the
23 time?

24 A. At that time, I don't believe there was a
25 protective order.

1 Q. Or an agreed confidentiality --

2 A. It was an agreed confidentiality order.

3 THE COURT: Are you all right?

4 MR. JEFFERSON: Yes. Thank you.

5 Appreciate the Court's consideration.

6 THE COURT: All right. Go ahead.

7 Q. (By Mr. Suazo) And was there a -- I think the
8 question was, was there a confidentiality agreement
9 at the time regarding disclosure of confidential
10 information?

11 A. I believe so, yes. And the deposition --

12 Q. I'm sorry.

13 A. Go ahead, I'm sorry.

14 Q. Is that why you filed a motion to leave to file
15 under seal a motion to compel a second deposition
16 out of respect for the confidentiality of the
17 deposition?

18 A. Yes, because that information means nothing to
19 me outside of the case, and I had to protect it out
20 of respect.

21 MS. MALONE: Your Honor, I'm sorry, I can
22 barely hear Mr. Radbil.

23 THE COURT: It's a problem that's been
24 throughout these hearings. Please pull the
25 microphone closer and speak up. Thank you for

1 notifying me of that.

2 THE WITNESS: Should I repeat that?

3 THE COURT: Yes, go ahead and repeat that
4 last answer.

5 A. Out of respect for the defendant, I filed it
6 under seal, even though it hadn't been properly
7 designated as confidential under the confidentiality
8 agreement.

9 Q. (By Mr. Suazo) And then to the extent that you
10 were asking for a second deposition, what did the
11 Court do with that component of the motion to
12 compel?

13 A. Well, we had a conference, and the Court looked
14 at the answers given by the corporate representative
15 designated by Regional Adjustment Bureau and found
16 them lacking and warranting a second deposition on
17 topics that were material to the elements of the
18 claims.

19 Q. So in other words, it was granted as to a
20 second deposition?

21 A. Yes.

22 Q. According to docket entry number 38, on
23 August 23rd, 2012, there was an emergency motion to
24 extend time to respond to the motion for summary
25 judgment. Can you tell us why you filed that motion

1 and what the disposition was?

2 A. Yes. After the conference with Judge Kaplan,
3 there were a number of documents that were referred
4 to in the original productions that had not been
5 produced. And Ms. Malone said she needed to Bates
6 label them, but refused to provide a certain time to
7 produce them. And we had summary judgment deadlines
8 and dispositive motion deadlines quickly
9 approaching. So in the absence of a firm date and
10 unable to plan for the review of the information and
11 use of it in dispositive motion practice, we asked
12 the Court to extend the time to file dispositive
13 motions, and that motion was granted.

14 Q. Did Ms. Malone oppose that motion for
15 additional time?

16 A. I believe she did.

17 Q. On September 10th, 2012, docket entry number
18 50, you filed a motion for leave to file a corrected
19 motion for summary judgment motion response. Tell
20 us why you filed that motion and what its
21 disposition was.

22 A. I erred and did not comply fully with the table
23 of contents and I believe the appendix requirements
24 of the Northern District of Texas. Having realized
25 that, I filed a motion for leave, and it was

1 granted.

2 Q. Did you attempt to get in touch with Ms. Malone
3 regarding that motion for leave?

4 A. I did. And I believe -- sometime ago now, I
5 believe I was threatened with the (inaudible) 182
6 motion, and I didn't get an answer from her one way
7 or another.

8 Q. First of all, did you attempt to get in touch
9 with her, yes or no?

10 A. Of course.

11 Q. And according to your certificate of
12 conference -- do you do certificate of conferences
13 when you file these kind of motions?

14 A. I do.

15 Q. And according to your certificate of
16 conference, she didn't return your call. Does that
17 comport with your memory?

18 A. Yes.

19 Q. So the disposition of that motion, though, was
20 what? Was it granted?

21 A. It was.

22 Q. On September 12, 2012, docket entry number 51,
23 you filed a motion for summary judgment. We know
24 why you filed that, but what was the outcome of that
25 motion?

1 A. Summary judgment was granted in plaintiff's
2 favor in four out of eight statutory claims, I
3 believe, two of the Texas Debt Collection Act
4 claims, which is Texas Finance Code Chapter 392,
5 et cetera, and the Federal Fair Debt Collection
6 Practices Act, 15 U.S.C. 1692. And there were fact
7 questions relating to whether an automatic telephone
8 dialing system was used to place calls or a
9 pre-recorded voice was used to place calls to a cell
10 phone without prior express consent to the called
11 party.

12 So we had four claims that we prevailed on,
13 which were fee shifting claims. And we had
14 Telephone Consumer Protection Act claims where there
15 were fact questions.

16 And I believe, if I'm not mistaken, I can't
17 recall whether one of our claims was dismissed or if
18 we abandoned it, but I don't recall offhand.

19 Q. Okay. But in short, it was granted in part and
20 denied in part, your motion for summary judgment.

21 A. That's correct.

22 Q. Docket entry number 77, on February 1st, 2013,
23 there was an objection to a pretrial disclosure.
24 Tell us why you filed that objection and what the
25 disposition was.

1 A. Tell me the date again, please?

2 Q. February 1st, 2013. Do you remember?

3 A. February 1st, 2013. Yeah, I believe it was an
4 objection -- I'm not certain. I think it may have
5 been an objection to the nondisclosure of the
6 individual telephone numbers and contact information
7 for witnesses of Regional Adjustment Bureau's
8 employees. And also the redaction, I believe, of
9 certain materials from the set of documents
10 produced, the second set of production produced.

11 Q. And let me ask, what was the ruling on that
12 objection?

13 A. Was that Doc 77?

14 Q. Yes.

15 A. The motion was granted. And Ms. Malone and her
16 law firm were required to either accept service of
17 the subpoenas as officers of the court or produce
18 them for trial to testify, and the Court reserved a
19 ruling on the redaction issue.

20 Q. Okay. On docket entry 83, on February 1st,
21 2013, you filed a motion in limine. Were some of
22 those granted and some of those denied?

23 A. Yes.

24 Q. And then finally, on February 13, 2013, the
25 final motion that you filed in the case was an

1 emergency motion to reset the pretrial conference.

2 A. Yes.

3 Q. Can you tell us briefly why you filed that and
4 what the result was?

5 A. I was appointed class counsel in the matter of
6 Little-King v. Hayt, Hayt, & Landau in the District
7 Court of New Jersey, and it was preliminarily
8 approved. We sent out a class notice to more than
9 50,000 individuals in the state of New Jersey and
10 Pennsylvania, and the final fairness hearing had
11 been scheduled for the same day as the pretrial
12 conference.

13 THE COURT: And you were lead counsel on
14 that matter?

15 MR. RADBIL: I was.

16 THE COURT: How many years had you been
17 practicing at that point?

18 MR. RADBIL: Four.

19 THE COURT: All right.

20 Q. (By Mr. Suazo) Okay. Mr. Radbil, focusing --
21 those were the only eight motions that were filed
22 during -- before trial. Would you agree with that?

23 A. By me?

24 Q. By you.

25 A. Yes.

1 Q. All right. So let's kind of focus on the trial
2 components of the multiplication of proceedings
3 claim. First of all, and I think Mr. Jefferson
4 covered this, how long did the trial take?

5 A. Two-and-a-half days.

6 Q. And if you look at Tab 1 in the notebook and go
7 to page 14 of 16, and this is going to be Radbil
8 sanctions, Exhibit 6. If you look at paragraph 5,
9 what was the joint estimate of how long the trial
10 was going to take in this case?

11 A. Two and one half days.

12 Q. If you look at the last page of that exhibit,
13 looks like the Certificate of Service is
14 February 8th 2012. So this two-and-a-half day
15 estimate obviously is before anything that happened
16 at trial had taken place, correct?

17 A. I have a page 15 that's in my binder that looks
18 as if it's misplaced dated February 26, 2013. The
19 very next page is page 16.

20 Q. The last page should be a Certificate of
21 Service. Is that what you have?

22 A. Yes, dated February 8, 2012.

23 Q. Okay. That's obviously before the trial had
24 begun, correct?

25 A. Yes. The pretrial conference was the 22nd, I

1 believe.

2 Q. All right. If you go to the next Tab, the next
3 Tab is your entire direct examination of Dr. White.
4 This is found at Volume 2 of the trial transcript
5 from pages 169 through 191. And let me just ask you
6 this question: How many pages of transcript did you
7 absorb in conducting the direct examination of
8 Dr. White?

9 A. I'm going to have to count, if you will give me
10 a second.

11 Q. Is it 20, 25 pages? Begins at 165 and ends at
12 191.

13 A. It was brief.

14 Q. It wasn't a long-drawn-out examination of
15 Dr. White.

16 A. Mine of him, no.

17 Q. On the next Tab, which is Tab 3, it's Volume 3,
18 pages 61 through 63, Volume 3 of the trial
19 transcript, it's your entire closing argument?

20 A. Yes.

21 Q. Tell the Court in connection with the claims
22 that the proceedings were multiplied, how many pages
23 did you absorb in conducting your closing argument?

24 A. Three pages.

25 Q. As you sit here today, Mr. Radbil -- and let's

1 shelve being tardy to Court that one day for a
2 moment -- is there anything that you did that you
3 feel you did purposefully, on purpose, in bad faith
4 to multiply the proceedings in this case beyond the
5 original trial estimate?

6 A. No.

7 Q. Let's focus on the Rule 37 motion for sanctions
8 that RAB has filed. And one of the themes that runs
9 through the brief is that you attempted to conduct a
10 trial by ambush on the opposing side with quotes
11 that you then came to trial in attempt to ambush RAB
12 for asking for \$45,000 in actual damages and present
13 expert testimony. Have you seen those types of
14 arguments being made against you in the Rule 37
15 motion?

16 A. Repeatedly, yes.

17 Q. Did you develop some trial plan, Mr. Radbil,
18 that you would purposefully and in bad faith not
19 disclose damages because you believed that you could
20 maneuver some undisclosed figures past Judge Boyle
21 or Ms. Malone?

22 A. No. As I discussed with Mr. Meyers,
23 Mr. Ehrlich, and my brother, in preparation for the
24 mediated settlement conference and for trial, there
25 was no intention of asking any juror for any

1 specific sum of money for damages. The damages were
2 mental anguish damages which cannot be quantified,
3 and that's what I believed the standard of law was.
4 So I believed it was a question for the jury, which
5 is why I did not ask the jury at any time for a
6 specific sum or a sum certain of money.

7 THE COURT: Do you still think you didn't
8 have to tell them that you were going for the
9 whatever it was, couple of thousand -- what was the
10 figure they asked for?

11 MS. MALONE: \$45,000.

12 THE COURT: \$45,000, that you didn't have
13 to tell them in advance? You don't think you had to
14 do that?

15 MR. RADBIL: No. May I explain why?

16 THE COURT: You said something during the
17 question-and-answer session we had during trial,
18 that you didn't think the federal rules of
19 procedures said that you should quantify damages if
20 you knew them in advance, so I was mystified by
21 that. So if you have a reason for why you didn't
22 think you had to give them that 45,000-dollar
23 figure, it conflicts slightly with this idea that it
24 was a rogue answer from your client, doesn't it?

25 MR. RADBIL: No, not particularly.

1 Because the damages that -- the \$45,000 in damages,
2 I believe, as is actual damages and memos, plural,
3 will show he attributed to the lender, not the
4 defendant in this case. So you can't trace any
5 damages back to the lender in the case.

6 THE COURT: And you're out there
7 practicing law and you still take this position on
8 the damages questioning is astonishing to me. I
9 apologize. Having sat through the trial and hearing
10 the varying explanations for this, I continue to be
11 amazed. And I appreciate so much counsel that's
12 here, and I hope you understand that this is not, in
13 any way, anything against you. I think it's a wise
14 decision that Mr. Radbil came here with you. But it
15 is frustrating, having sat here and seeing the
16 varying stories and the lack of experience and the
17 arrogance about whether or not he did anything
18 wrong.

19 Go ahead and ask your next question.

20 MR. SUAZO: Your Honor, we will come to
21 those points very specifically --

22 THE COURT: Okay.

23 MR. SUAZO: -- in just a moment.

24 Q. (By Mr. Suazo) So Mr. Radbil, I think we were
25 talking about whether you had a plan. Just please,

1 if you can, try to answer my question, which is,
2 first of all, did you develop some trial plan that
3 you would purposely not disclose damages because you
4 thought you could get one past Judge Boyle and
5 Ms. Malone?

6 A. No.

7 Q. Did you have some plan that you would not
8 timely disclose witnesses because you thought you
9 had a good chance of getting the witnesses through
10 an objection from Ms. Malone and beyond Judge Boyle?

11 A. Absolutely not.

12 Q. If you look at Tab 4, Volume 1, page 24, this
13 is in the pretrial conference before any trial has
14 even begun.

15 THE COURT: I'm sorry. What exhibit would
16 this be of yours?

17 MR. SUAZO: This would be Volume 1, page
18 24 of the trial transcript.

19 THE COURT: And is that an exhibit in any
20 of these documents that have been submitted? Do I
21 have that in front of me in any form as an exhibit?

22 MR. SUAZO: I'm not certain if the actual
23 trial transcripts have been provided to the Court in
24 that form.

25 THE COURT: I don't have the trial

1 transcripts, and I didn't even know that they had
2 been ordered in full.

3 MR. SUAZO: They have been, Your Honor. I
4 can hand you the transcript.

5 THE COURT: That would be great. That
6 would be helpful.

7 MR. SUAZO: May I approach, Your Honor?

8 THE COURT: You may. I knew excerpts had
9 been produced, I just wasn't sure if the entire
10 transcript had been produced. Let's do the best we
11 can. Why don't you come around to this side and
12 hand it to the court security officer and he can
13 hand it to me. Is this an extra copy?

14 MR. SUAZO: Well, Your Honor, it's my only
15 copy, but I'm willing to forgo it.

16 THE COURT: I will give it back to you.

17 MR. SUAZO: And what we have done is, we
18 have four tabs, Volume 1, 2, 3, 4. Those are the
19 four tabs.

20 THE COURT: Does the defense have the
21 transcript?

22 MS. MALONE: Yes, Your Honor, we do.

23 THE COURT: Okay.

24 Q. (By Mr. Suazo) So we were going to Volume 1,
25 page 24, and this is lines 4 through 8. And this is

1 at the opening pretrial conference when the
2 objection to these witnesses was ultimately made.
3 Did you withdraw the witnesses upon the objection?

4 A. Yes. And I also noted there was no intent to
5 offer causation testimony, that they were moan and
6 groan, as it was said before, type of witnesses.

7 Q. After that objection was sustained or you
8 withdrew the witnesses, did you ever attempt to call
9 any of these witnesses to the stand?

10 A. No, sir.

11 THE COURT: Let me just be clear, because
12 there was some -- it's a little confusing. I know
13 about the medical testimony. But as I recollect,
14 there was an issue with regard to employees of RAB,
15 right?

16 MS. MALONE: Right.

17 THE COURT: And I, the Court,
18 misunderstood, because in 99 percent of the cases I
19 have with any corporation, the parties are in
20 agreement about providing and not providing.

21 In this particular case, there was not,
22 nor could I require that there be -- and I don't
23 even think it's a bad faith practice, I think it's
24 up to the corporation -- that I mistakenly believed
25 they weren't providing when agreements had been made

1 to the contrary. I was wrong about that. But
2 Mr. Radbil had a complete misunderstanding of the
3 authority, his authority and the Court's authority,
4 to bring these people in from out of state. And he
5 was dumbfounded by this particular point, and there
6 was another example of his lack of knowledge.

7 The Court made a mistake by presuming that
8 they had had some agreement, and that's exactly what
9 happened there. So there were five employees that I
10 directed them to bring with no jurisdiction to do
11 so, my problem, and then there were these other
12 medical people, which is a separate issue.

13 MS. MALONE: And Your Honor, there were
14 also some individuals that -- the neighbors from
15 next door from Dr. White who appeared in the
16 courtroom and the Court swore them in, so they were
17 part of the late disclosed witnesses. And while
18 it's true that Mr. Radbil did not call them to the
19 stand, he actually had them come into the courtroom
20 and be sworn in as witnesses. I guess just in case,
21 I don't know. But that was the day after the
22 pretrial conference. And I will tell the Court he
23 did agree to withdraw part of the witnesses on the
24 Sunday before the pretrial, though.

25 THE COURT: Okay. It was getting a little

1 confusing, because we have spoken so much about the
2 medical witnesses. We haven't spoken at all about
3 this issue with regard to the Court's jurisdiction
4 to bring a corporate employee here. Unless they are
5 an officer or director, it's not there, and that's
6 what happened. That was my mistake.

7 MR. SUAZO: Right. And I think with
8 regard to the disclosure issue, the complaint about
9 the failure to disclose, I don't think there was a
10 complaint that Mr. Radbil failed to disclose
11 employees of RAB, and that's why that's a
12 separate --

13 THE COURT: I agree.

14 MR. SUAZO: I was not getting to that
15 point, but I will try to address that.

16 THE COURT: Okay. Let's go ahead.

17 Q. (By Mr. Suazo) Mr. Radbil, let's kind of skip
18 over to the issue of damages, and let's start out
19 with economic damages.

20 And I have read RAB's Rule 37 motion contending
21 that you, Mr. Radbil, sought economic damages at
22 trial for Dr. White. So I want to kind of address
23 that. And if you -- if you could take a look at Tab
24 5. This is RAB's Rule 37 motion, docket entry
25 number 119, page 8. You can even go to page 1 and

1 page 8. There are some references there that
2 Mr. Radbil, you attempted or you sought those
3 damages. Do you see those references in that
4 motion?

5 A. If you could help me out and point me to a line
6 number or paragraph.

7 Q. If you go to paragraph 12: Plaintiff's
8 counsel's discovery conduct lead -- this is on page
9 8 -- to the necessity of numerous motions. . . RAB
10 was forced to seek this Court's intervention to have
11 plaintiff produce discovery regarding actual
12 damages. Despite this, plaintiff never supplemented
13 discovery, responses, or disclosures on actual
14 damages to represent \$45,000 in damages he sought at
15 trial.

16 And then at page 1, talking about the
17 plaintiff's counsel then came to trial in attempt to
18 ambush RAB by asking for \$45,000 in actual damages
19 and present expert testimony. And this is in a
20 sanctions motion being filed against you and the
21 firm, not against Dr. White. Do you see those
22 remarks?

23 A. I do, and those remarks are not true.

24 Q. I have taken a look at your opening statement.
25 It's in Tab 6 in your notebook, which is Volume 2,

1 pages 87 through 93 --

2 THE COURT: It's all right. Go ahead. I
3 have a pretty good recollection of it, but go ahead.

4 Q. (By Mr. Suazo) Mr. Radbil, during your opening
5 argument or opening statement, did you ask for
6 \$45,000 in economic damages? And you can take a
7 look at your opening statement. It's about six
8 pages.

9 A. I did not.

10 Q. Did you ask for economic damages?

11 THE COURT: I'm sorry, but I need to take
12 about a five-minute break here and come back to
13 this.

14 (Recess taken from 4:44 to 4:54.)

15 THE COURT: I thought it might be easier
16 if I could get e-mail access to the transcript, and
17 I have now. So I will give this back to you,
18 Mr. Suazo. All right. Go ahead.

19 Q. (By Mr. Suazo) Mr. Radbil, I think where we
20 left off was whether or not you had asked for any
21 economic damages in the opening remarks that you
22 made before the jury in your opening statement.
23 What was your answer to that question?

24 A. The answer was no.

25 Q. All right. Let's take a look at your direct

1 examination of Dr. White. It's Tab 2 of that
2 notebook that I gave you. It's Volume 2, pages 169
3 to 191 of the trial testimony. Do you remember
4 examining Dr. White during trial?

5 A. I do.

6 Q. Did you ask Dr. White during the direct
7 examination to calculate his damages for the jury?

8 A. His images?

9 Q. His damages.

10 A. No. I asked Dr. White the status of his
11 student loans and the reason -- well, I asked him
12 to -- what the status of his student loans were.

13 Q. Did you ask him to do a mathematical
14 calculation for the jurors of his economic damages?

15 A. No. I just wanted to make sure that the jury
16 knew that he was making efforts to repay his loans
17 rather than be portrayed as a deadbeat.

18 Q. So I take it, then, the answer is no, you did
19 not ask him to do a chart or anything like that or
20 do the math.

21 THE COURT: Could you give me the page of
22 the transcript?

23 MR. SUAZO: It's Volume 2, pages 169
24 through 191. That's his direct examination.

25 THE COURT: Got it. Thank you.

1 Q. (By Mr. Suazo) Did you ask him about a lost
2 teaching position during the direct examination?

3 A. I don't recall doing so, no.

4 Q. Well, if the record reflects that there's no
5 such question between pages 169 and 191 and that's
6 your only direct examination, would you let the
7 record reflect that you didn't ask him about a lost
8 teaching position?

9 A. I think that's reasonable, yes.

10 Q. Did you suggest during your 22-page examination
11 of Dr. White on direct that Dr. White in any way
12 suffered \$45,000 in damages, in economic damages?

13 A. No.

14 Q. Did you ask Dr. White during your direct
15 examination whether he was seeking the \$40,000 in
16 damages?

17 A. I did not.

18 Q. Did you in any way intend on asking him to
19 quantify some \$40,000 or \$45,000 in damages?

20 A. No, I did not.

21 Q. All right. If you would go back to Tab 2 and
22 take a look at page 189 of Volume 2, still in your
23 direct -- I'm sorry, looks like Tab 7, I'm sorry,
24 still Volume 2, page 189. And the question that you
25 just referenced was asked: What was the status of

1 your loans today?

2 And let me know when you get there, at page
3 189.

4 A. Yes. The question: And what is the status of
5 your loans today?

6 Q. That's at line 11.

7 A. Yes.

8 Q. What were you trying to solicit with that
9 question?

10 A. I just wanted to make sure the ladies and
11 gentlemen of the jury knew that he wasn't
12 intentionally taking money without intent to repay
13 from the State of Texas.

14 Q. Were you trying to find out if the loans were
15 in default?

16 A. I just wanted to portray him in a good light
17 rather than a bad one; that he's making effort and
18 that he intends to pay the loans rather than abscond
19 with the money of the taxpayers.

20 Q. Does the status of the loan have anything to do
21 with RAB debt collection efforts?

22 A. No, sir.

23 Q. And so when you were asking him that question,
24 what the status of the loan was, were you attempting
25 to solicit a response that wound up tailing off into

1 \$40,000 in damages.

2 A. No, it was an unsolicited answer to what I
3 think is a proper question.

4 Q. Did he eventually, at the end of that answer --
5 at the end of his answer, did he actually answer the
6 question whether they were in default or not?

7 A. He eventually answered the question that I
8 asked, yes.

9 Q. If the record shows that, on the next page, you
10 asked an additional question on default on loans and
11 he just answered it and said they weren't in
12 default, was that what you were attempting to
13 solicit with your questioning?

14 A. Yes. And I knew that he had defaulted on other
15 loans, and I wanted to be up front with the ladies
16 and gentlemen of the jury, so I wanted him to
17 explain not amounts, but I wanted him to explain his
18 situation, generally speaking.

19 Q. All right. Mr. Radbil, what is your
20 understanding of the disclosure obligation under
21 Rule 26 of the Federal Rules of Civil Procedure for
22 economic damages that are not being claimed in the
23 lawsuit? Do you think there is a duty to disclose
24 damages that are not being claimed or only damages
25 that you are claiming and seeking?

1 A. My understanding is the latter, that you have
2 to disclose and quantify economic damages that you
3 are claiming and seeking, but mental anguish damages
4 are inherently unquantifiable. Therefore, as I
5 understand Fifth Circuit law, the jury determines
6 the amount based on the history of the plaintiff.
7 And the way that I prepared Dr. White and the way I
8 prepare other client's --

9 MR. SUAZO: Mr. Radbil, look at the Court.

10 THE COURT: Here is the question.

11 MR. RADBIL: Yes.

12 THE COURT: Yes, the defense attorney or
13 plaintiff's attorney can get up there and ask the
14 jury for a certain specified sum of damages in
15 argument. But the distinction here is that you
16 specifically solicited expected testimony from him,
17 and that's what you basically said in the sidebar,
18 of 45,000, and that should have been disclosed to
19 them.

20 MR. RADBIL: Sorry to interrupt.

21 THE COURT: You can't have a witness
22 testify about specific economic damages and not
23 disclose that to them pursuant to their questions,
24 and that's the distinction that I see. And I don't
25 know where you're referring to in the federal rules

1 that you don't have to do that.

2 And we did the sidebar, and this is the
3 interesting part about the sidebar. She objected.
4 She said that the answer and question that you are
5 asking him and he was about to answer wasn't
6 supplemented. And you approached the bench.

7 And I said: What is your objection,
8 Ms. Malone?

9 And she said, I asked him for a question
10 regarding treatment for this matter and if he was
11 going through any treatment or if there was any
12 further treatment, in interrogatory number 33, and
13 asking for future psychiatric care --

14 MR. SUAZO: Can I get a page? I'm sorry.

15 THE COURT: Yes. I'm at page 187 --

16 MR. RADBIL: May I speak?

17 THE COURT: -- moving to 188. And his
18 statement to that in response to Ms. Malone's
19 question, that she hadn't been told in any
20 interrogatories about him seeking treatment or
21 future treatment, Mr. Radbil said, I don't know the
22 answer.

23 And I said to him, you must be looking for
24 something favorable or you wouldn't have asked it.

25 And he answers, sure.

1 And I said, do you think he's going to say
2 none?

3 And he said no. And the objection was
4 sustained. So I disagree with this construction of
5 the law, but go ahead. I just want to be clear
6 about the representation that was made to the Court.

7 MR. SUAZO: If I can address that point,
8 because what we were talking about -- there's three
9 points that have been made by RAB. One of them is
10 the \$40,000; the next one is the \$5,000; and the
11 next one is the counseling. I think what the Court
12 was just referring to was the counseling, the
13 question about counseling, page 188.

14 THE COURT: Partly. But he came out with
15 this 45,000-dollar figure in two or three different
16 answers. And that fact, regardless of the
17 counseling part, was never disclosed to them,
18 either.

19 Ms. Malone?

20 MS. MALONE: Yes. The other thing I would
21 point out to the Court is that we actually had a
22 motion in limine that specifically stated that he
23 would not -- he would talk to witnesses and that
24 they would not seek for answers that were outside of
25 their disclosures. This is a standard motion in

1 limine, and I think the Court granted it.

2 THE COURT: That was partly what was the
3 purpose of the objection at the sidebar. So I
4 understand the point that you are making, but my
5 recollection and from the record refreshed is
6 different.

7 MR. SUAZO: Okay. Well, Your Honor, and
8 that's -- I appreciate that, because his entire
9 direct is right there in the 22 pages, page 169
10 through 191. That's the only reference to the
11 \$40,000 in response to that question.

12 THE COURT: So let me make sure I am
13 clear, then, on the defensive theory here by counsel
14 to the position that the defendants have taken and I
15 agree with from the record that they didn't -- that
16 Mr. Radbil never disclosed this \$45,000 nor did he
17 disclose counseling. What is the defense theory on
18 that for Mr. Radbil?

19 MR. SUAZO: The defense theory is that
20 Mr. Radbil never sought those damages during trial.

21 THE COURT: No, I mean your theory for him
22 today.

23 MR. SUAZO: Yes, Your Honor. It was never
24 sought by the plaintiff in the case, in the
25 underlying case, if you would. It was never asked

1 for in opening, it was never asked for in direct, it
2 was never asked for in closing. It just wasn't
3 sought.

4 The \$5,000 was solicited on cross by
5 Ms. Malone. It wasn't even a question during the
6 direct examination by Mr. Radbil. So we have the
7 \$40,000 that comes out in response to that one
8 question, and I believe we just pinpointed the page,
9 page 189 of Volume 2. That was the only question:
10 What is the status of your loans?

11 The response to that question -- a
12 directly responsive answer to that question could
13 have been, well, they are not in default. But there
14 was an additional -- there was additional verbiage.

15 THE COURT: He didn't explain that at the
16 sidebar, Mr. Suazo. Ms. Malone gave him every
17 opportunity to be clear on what her problem was with
18 what he was asking about in connection with this
19 testimony and in connection with the motion in
20 limine, and he never said what you are saying. So
21 that may be what he's arguing now, but that is not
22 the way that it came out.

23 Ms. Malone, is there any more
24 clarification you want to make on this?

25 MS. MALONE: The only thing, Your Honor,

1 it is true that the reference to the 5,000 came up
2 when I asked him, which is part of our point about
3 the Rule 37. I asked him, his client: You have not
4 been out of pocket any money as a result of these
5 events?

6 And then he says: I lost 5,000 by not
7 teaching a class.

8 And I got him to clarify that that didn't
9 happen. But the whole point to this, Your Honor, is
10 that he was charged in the motion in limine to tell
11 his witness that they were stuck with whatever the
12 disclosures were. And he did not tell the Court,
13 ever, that this was just something his client said.
14 In fact, he argued with the Court that he had no
15 obligation to do it.

16 We had an entire motion 37, a short
17 hearing at the end of the day, and not once did he
18 ever say, oh, my client said this, despite the fact
19 that I told him that you're going to have to just go
20 with what's your in your disclosures.

21 And in the motion in limine -- the duty of
22 attorney under a motion in limine is to make sure
23 that the witnesses are advised of what the rules are
24 with regard to that. So I don't see how it's not
25 Mr. Radbil's responsibility. You don't just put a

1 witness up there and expect them to know what the
2 motion in limine is about that's already been ruled
3 on by the Court.

4 THE COURT: I agree. I agree, and that's
5 the point.

6 MR. SUAZO: Judge, in fairness, Dr. White
7 was here for all these proceedings. Dr. White was
8 able to observe all these proceedings.

9 MS. MALONE: He wasn't here at the
10 pretrial.

11 MR. SUAZO: And I'm not even certain,
12 Judge, that a motion in limine on that point was
13 granted. Because at the end of the pretrial
14 conference, Ms. Malone -- I didn't see a ruling in
15 the pretrial conference on any motion in limine.

16 THE COURT: Well, I tell you what, if
17 we're going to parse through this, then we're going
18 to do it right now, because I'm going to get -- this
19 has gone on way too much in this case. He puts
20 nuances that weren't there in what really happened,
21 and it's clear from the record and my recollection,
22 as well as the recollection of defense counsel and
23 all of the papers. So I want to find out right now
24 what the answer to this is. We're not going to skim
25 over this.

1 MR. RADBIL: Thank you.

2 THE COURT: Mr. Radbil, would you please
3 be quiet?

4 MR. RADBIL: Yes.

5 THE COURT: I want to give you,
6 Ms. Malone, and you, Mr. Suazo, a chance to look at
7 this. Let's find out exactly what the point is and
8 find out what's correct and what's not correct. All
9 right? Let's get the answer. I will give them a
10 chance to look for it, and I will give you a chance
11 to look for it. And Mr. Radbil, you can step down.

12 MR. RADBIL: Thank you, Your Honor.

13 MR. SUAZO: Your Honor, I hate to ask for
14 clarification. What's the point that I need to work
15 out with Ms. Malone, the issue of the limine?

16 THE COURT: What actually occurred that
17 right now the defense theory is was either all right
18 or mistaken but not a violation of his duties under
19 the rules of discovery or his responsibilities
20 pursuant to the Court's order on the motion in
21 limine. That's what I'm asking. Because the point
22 that I understand you're making is that he didn't
23 violate a motion in limine, he didn't violate any
24 rules of discovery in not disclosing this, and that
25 there wasn't anything wrong with what happened

1 there.

2 His theory and explanation have changed
3 and evolved from hearing to trial to today, and I
4 want to find out exactly what happened. We're not
5 going to gloss over this anymore. I want to get the
6 right details, precisely what their position is and
7 where the answers are in the record, and yours as
8 well. How ever long it takes, we will get to the
9 bottom of this. We will take a break until you all
10 have a chance to find it.

11 (Recess taken from 5:08 to 5:31.)

12 THE COURT: I want to get back to that
13 issue of damages and the basis for the defense
14 motion, which was the damages and then if a
15 quantifiable number was asked during deposition and
16 discovery and never forthcoming. And there was also
17 no indication that he had sought any kind of
18 counseling. I guess he called and left a message
19 for someone and hadn't gotten it. That was my
20 understanding of what they thought.

21 Then at trial Mr. Radbil asked Dr. White
22 about to get answers in the affirmative that he had,
23 in fact, sought treatment. And then there is the
24 other issue of him coming up with the \$45,000 in, I
25 guess, outstanding loans.

1 The question is whether or not this
2 \$40,000 should have been disclosed by Mr. Radbil
3 under the Federal Rules of Civil Procedure or
4 otherwise. It continues to be the Court's position
5 that it should have been and was not and was another
6 example of misconduct by Mr. Radbil.

7 So I'm going to give Mr. Suazo a chance to
8 tell me the support for your theory, and then I want
9 to hear from Ms. Malone. I apologize for this, but
10 it's just that there's so much here. And anyone
11 reading this record in the future is going to be
12 very confused if they don't understand where this
13 discussion -- how this is based upon other evidence
14 and whether or not it's inconsistent, so I'm trying
15 to make it as clear as possible.

16 MR. SUAZO: Your Honor, our position would
17 be that, with respect to the questions that
18 Mr. Radbil asked Dr. White at trial, because we're
19 focusing in on the trial conduct, in the opening,
20 which was I think the six-page opening statement in
21 Volume 2, he didn't ask for any of these damages.

22 In Volume 2 at pages 169 through 191, he
23 gives a direct examination. I've read the record.
24 I don't read the record as Mr. Radbil asking
25 specifically a question that would solicit the

1 \$40,000. That answer came out in response to a
2 question that said, what is the status of those
3 loans? The correctly responsive answer to that
4 would have been, they are in default, or, this is
5 the amount that's owed.

6 If you read the answer to that question,
7 there could very well be a nonresponsive objection
8 sustained to that, I think. Then it goes into
9 closing argument, and Mr. Radbil doesn't ask for the
10 \$40,000 or the \$5,000 and the like.

11 Now, granted, when the Court quizzes
12 Mr. Radbil at Volume 2, I think pages 252 through
13 258, Mr. Radbil gives a very series of what I would
14 call frustrating answers. I have worked with
15 Mr. Radbil, and I can tell the Court I have been
16 frustrated working with Mr. Radbil on occasion. But
17 I don't think Mr. Radbil has intentionally or
18 purposefully attempted to mislead me, at least, in
19 any way. I just think that's part of the nature of
20 Mr. Radbil, that sometimes you ask him a question of
21 what time it is, and you get a little bit of how the
22 clock was invented.

23 THE COURT: Right.

24 MR. SUAZO: I hate to say that with him
25 staring at me and looking at me, that's the truth;

1 that's my perception of him.

2 I think what happened was, when the Court
3 asked the question at page 252, the question that
4 was, where are the disclosures of damages, aside
5 from the initial disclosures that Ms. Malone
6 requested or had referred to, because Ms. Malone had
7 referred to the initial disclosures.

8 His answer to that question was correct.
9 He said, we supplemented those disclosures. They
10 are supplemented here. He gave the Court the
11 identity of the document where they were disclosed.

12 What the Court, I think, was looking for
13 in response to that question was, where is the
14 40,000 and where is the 5,000 disclosed? That
15 wasn't in the question, but I think that's what the
16 Court was looking for. The response was a correct
17 answer, because he said, they're in our supplemented
18 disclosures.

19 THE COURT: What was it in the
20 supplemented disclosures that would have revealed
21 the 40 or the five?

22 MR. SUAZO: Nothing.

23 THE COURT: Okay. And the position he's
24 taking today on the witness stand from him is that
25 he didn't have to disclose this because you don't

1 have to disclose these types of mental anguish
2 damages, as I recall, just a few minutes ago.

3 MR. SUAZO: Not mental anguish damages,
4 economic damages that are not being sought. If
5 Mr. Radbil was not seeking those damages as counsel,
6 if he wasn't intending to ask the jury to award
7 them -- if I have a number of economic damages but
8 I'm not claiming them in a lawsuit, I don't think I
9 have a duty to disclose those damages if I am not
10 seeking them. If I don't disclose them, then I
11 don't get to put on the evidence of them.

12 THE COURT: Where is it we are supposed to
13 buy into this idea that he wasn't seeking them but
14 that they were irrelevant to the cause of damages?

15 MR. SUAZO: In three areas, Judge: First,
16 in the opening statement where he makes no remark
17 about them; second, in the 22-page direct
18 examination, where he doesn't ask a specific
19 question, had you suffered damages, economic
20 damages, as a result of this. The answer it is in
21 response to is, what is the status of the loans?
22 And then the third one is in the closing arguments
23 where he doesn't ask --

24 THE COURT: Well, he couldn't at that
25 point. He was firmly told this was off limits. I

1 want to hear from Ms. Malone in just a moment. But
2 it seems to me that this 40,000 in loan information
3 or student loans and then the 5,000 is a
4 quantifiable sum; that it depends on your
5 perspective as to whether or not he was looking for
6 it. It sounds to me like he was.

7 When Dr. White was here waiting
8 for Mr. Radbil that morning, this is what he said to
9 the Court. I asked him if he had any questions, and
10 he said: "Just one. And I apologize, it seems
11 presumptuous for me -- seems like I'm acting like my
12 own attorney, which I am not in any way. But I felt
13 like I should make a response to the issue of
14 sandbagging yesterday with the claims.

15 "I did quantify the damages. And they
16 were not an abstract sum for mental anguish, they
17 were real financial damages that I suffered. I made
18 sure Mr. Radbil had that information. The judge
19 recorded it in the settlement conference, and I was
20 led to believe it would be submitted for this trial,
21 which of course it wasn't. So I apologize."

22 That's what he said. So you can
23 understand there are two reasonable -- one really
24 reasonable inference that I think can be taken from
25 what happened and what you've said. But I would

1 like to give -- I will give you a chance to finish,
2 but I want to give Ms. Malone a chance to explain
3 this.

4 Because as I go back through -- and I have
5 been back through all of this more than once. But
6 I'm just going back through the pretrial conference
7 now and, again, it's just marked with these kinds of
8 problems with Mr. Radbil: One, not knowing the
9 answer to important legal questions that he should
10 never have been in court if he didn't know the
11 answers to; and then prevaricating on his position
12 as to why he doesn't know the answer; and then
13 arrogantly insisting that he's right. And that
14 seems to have been the pattern throughout this case,
15 even to the point where he will misrepresent
16 something. That's the pattern I have seen. I will
17 let you finish in just a minute.

18 Ms. Malone.

19 MS. MALONE: Your Honor, I agree with you.
20 One thing I would point out in the pretrial
21 conference. We went back and looked, and there
22 wasn't a specific discussion about the disclosures.

23 There, however, was a lengthy discussion
24 about the problem with their late designation of
25 witnesses in the disclosure and the Court reminding

1 him of his obligation to have timely done that and
2 that the Court would not allow that kind of late
3 disclosure from happening.

4 So if you want to take it from that that
5 the Court had already reminded him that he had a
6 duty under Rule 26 and that he would be stuck with
7 what was relevant at the point in time that it
8 occurred. If I could read for the Court, if I
9 could, this is actually from document 125.

10 THE COURT: Read slow.

11 MS. MALONE: Document 125 is the response
12 that plaintiff's counsel -- signed by Mr. Radbil, I
13 believe -- submitted in response to our Rule 37
14 motion for that we're here for.

15 And on page 12, they write: Having been
16 prepared specifically at the request of his counsel
17 in preparation for trial, Dr. White's memorandum
18 regarding his actual damages would not ordinarily be
19 discoverable absent RAB showing a substantial need
20 for the materials to prepare its case and an
21 inability, without undue hardship, to obtain
22 substantially equivalent evidence by any other
23 means. And it cites to the rule.

24 And then states: Dr. White's deposition
25 provided such means. And then it says: See App 25,

1 White deposition, estimating disputed amount of debt
2 owed to Texas Guaranteed at \$40,000.

3 And in their brief, Your Honor, which
4 certainly isn't under the heat of fire, he certainly
5 had time to think about what he wrote, no word in
6 here says, our client said this without our advice,
7 or, our client did this on their own. The first and
8 only time that we heard the testimony that this came
9 out of the blue was in the sanctions hearing where
10 Mr. Meyers started cross-examining Mr. Radbil. I
11 didn't even know it was a question to ask.

12 So the idea that this was the client's --
13 it wasn't in the written papers. It's not cited
14 anywhere in any of the briefing or any of the
15 transcript when we had this situation going on. It
16 only came up when we were actually at the hearing
17 and Mr. Meyers was questioning him.

18 MR. RADBIL: When we were --

19 THE COURT: No, Mr. Radbil.

20 MS. MALONE: And I also, Your Honor, was
21 going to cite to you the same thing you did, which
22 is what Dr. White told us, that he had been assured
23 that testimony would be admissible at trial.

24 THE COURT: All right.

25 Mr. Suazo, finish up, and let's go on with

1 some more questions.

2 MR. SUAZO: If I could have just a brief
3 point to that, because I did want to cover what the
4 client said. And there is a memorandum -- I think
5 it's been put into the record -- of what Dr. White
6 prepared. And following his preparation of that
7 memorandum, there's some discussions between
8 Mr. Radbil -- I feel it's a little unusual getting
9 into all the attorney-client information, but I
10 realize that I've got to do it here -- that
11 Mr. Radbil had conversations with him about it and
12 had conversations, from what I understand
13 from Mr. Radbil, that these are damages attributed
14 to the Texas Guaranteed loan. Even in the brief
15 that Ms. Malone just referred to, there's a
16 reference to the Texas Guaranteed loan, that there
17 were additional charges by Texas Guaranteed.

18 And we can ask Mr. Radbil why -- why
19 didn't you seek those damages, and I've asked him
20 that. And he says that those are as a result of
21 things that were done by Texas Guaranteed, not RAB.
22 I didn't think that I could quantify that.

23 This is a memorandum that's prepared
24 December 28th, 2012. This is after discovery is
25 closed that this memorandum comes. If Mr. Radbil

1 comes flying down to the courtroom on December 29th
2 and says, I'm seeking these damages against the
3 defendant that I haven't sued, there's going to be a
4 whole world of other different problems. So that's
5 number one.

6 And then number two, I think -- I think
7 what you're going to see is Mr. Radbil, while there
8 may not have been any statement regarding, I didn't
9 ask -- I wasn't expecting this response from my
10 client before he was put on the stand to testify
11 live at a hearing. I think the actual better
12 evidence that I would implore the Court to look at
13 is the actual questions during those 22 pages of
14 direct examination. Those are the questions. And
15 look and see if there's fairly a question where
16 Mr. Radbil is trying to sneak out some damages
17 somewhere.

18 I think that's -- to me, maybe the
19 briefing is bad, maybe they should have done a
20 better job briefing it at that point. Maybe
21 Mr. Radbil should have done a better job answering
22 the questions. But if you look at the questions
23 that he asked between pages 169 and 191 -- it's only
24 22 pages -- I don't think there's a question
25 soliciting that type of response.

1 THE COURT: Thank you, Mr. Suazo.

2 MS. MALONE: The only thing, Your Honor,
3 it has to do with this December 28th memo from
4 Dr. White.

5 If the Court will recall when we were at
6 the hearing with Mr. Radbil to begin with, he told
7 us, based on the invoices that he provided to us
8 from the trial, that he received memos from
9 Dr. White for December 6th and December 7th, and he
10 said those memos had to do with his damages.

11 We never heard about this December 28th
12 memo until much later. He billed for them three
13 weeks before. So I want to know where the memos are
14 that he testified in the first trial or in the first
15 part of this hearing that refer to the damages, not
16 this one that's December 28th. I want to see the
17 ones that he talked about that he had and relied on
18 and testified to the Court the first time around.

19 THE COURT: So, Counsel, I think I have
20 heard both side out on this. I just wanted to
21 clarify where everyone was coming from. Move to
22 your next point.

23 MR. SUAZO: One more point, and I promise
24 it will be very brief.

25 THE COURT: Briefly.

1 MR. SUAZO: In the pretrial conference
2 towards the very end, it deals with the point that
3 the Court raised about the limine issue. And at the
4 very end the Court says -- and I will give you a --
5 it's Volume 1, page 85. The Court says: I would
6 now like to hear from the defense on their motion in
7 limine and, again, hopefully we can get through some
8 of this because we have already discussed it or it's
9 been -- it's boilerplate.

10 So this is the Court moving from the
11 motions in limine to the defense, and the response
12 is: Judge, actually it's not boilerplate, but we
13 have covered it through the rulings you have made on
14 the exhibits and witness list. The only thing in
15 our motion in limine had to do with the
16 admissibility of witnesses or exhibits, so I think
17 you have already covered everything.

18 So I'm not certain there was a ruling on
19 damages. Not to say whether there was a ruling on a
20 limine or not, someone should come flying forward
21 with some damages, but I'm not certain that there
22 was a ruling on any limine point.

23 THE COURT: Thank you, Mr. Suazo.

24 Ms. Malone.

25 MS. MALONE: Your Honor, I didn't find a

1 reference, and we don't have our motion. But
2 clearly I thought the Court had taken care of a lot
3 of my motions, so I didn't argue the whole thing.
4 I'm not sure if there was a specific one. I would
5 still stand that the fact the Court chastised him
6 about late disclosure of witnesses should have put
7 him on notice that he was stuck with his disclosures
8 at that time.

9 MR. RADBIL: If I may, please.

10 THE COURT: No, Mr. Radbil, you may not.
11 You have lawyers that speak for you, and you are
12 lucky that you do.

13 Go ahead.

14 Q. (By Mr. Suazo) Mr. Radbil, I'm trying to
15 streamline some of the damages, but I do want to get
16 your testimony on it. We have covered the \$40,000.
17 I think we got through the 5,000-dollar teaching
18 job. Who solicited the testimony regarding the
19 5,000-dollar teaching job? Was that you or was that
20 RAB?

21 A. That was RAB, but I would like to go back for
22 one brief moment.

23 THE COURT: No, we are not going back.
24 We're going with Mr. Suazo's questions.

25 Go ahead.

1 Q. (By Mr. Suazo) Who solicited that testimony,
2 Mr. Radbil?

3 A. It was solicited on cross-examination by Robbie
4 Malone.

5 Q. Okay. Is there a brief point that you would
6 like to say that you can make very briefly?

7 THE COURT: I don't want to go back to
8 what we have just discussed on the damages, we have
9 covered that. So if that's what it's about, I'm not
10 going to let him do it. Let's move on to the next
11 point.

12 Q. (By Mr. Suazo) Let's close out the loop on
13 economic damages for a moment. There was discussion
14 by the Court. It begins on Tab 11 in your notebook,
15 Volume 2, page 252, where it is begins -- where the
16 Court starts asking you for the -- where the
17 disclosures were.

18 Can you tell the Court -- look at the Court and
19 tell the Court what you think happened in those
20 pages, between 252 and 258, where she asks you,
21 where are the disclosures?

22 THE COURT: Let me get there.

23 Okay. Go ahead.

24 Q. (By Mr. Suazo) Mr. Radbil, the Court asked you
25 some questions, and it dealt with economic damages.

1 And the Court has expressed some dissatisfaction
2 with you and your responses to these questions.

3 What do you -- what's your explanation for what
4 transpired between pages 252 and 258?

5 A. It goes back to the memorandums that Dr. White
6 prepared. And those are key, because Dr. White says
7 in those memorandums -- and he's given us permission
8 to use them, by the way. He says that the
9 additional \$40,000 in economic damages was a result
10 of Texas Guaranteed adding fees, which we were not
11 seeking from the debt collector, Regional Adjustment
12 Bureau. So it's --

13 Q. Let me stop you for just a second here. The
14 Court asks you -- because Ms. Malone makes an
15 objection based upon initial disclosures. And she
16 tells the Court, these are the initial disclosures.

17 And then the Court asks you at page 252, line
18 23: Where are the submissions that give them notice
19 of the amount of damages that you are seeking
20 outside of the initial response that Ms. Malone
21 referred to -- that being the initial disclosures
22 that Ms. Malone referred to.

23 What was your response?

24 A. I believe that -- what page are you on?

25 Q. At page 252, line 23. It's in Tab 11 of your

1 notebook.

2 A. I believe we copied and pasted from the
3 pretrial order -- from the pretrial disclosures and
4 for the pretrial order, excuse me. And there is no
5 quantified amount, because we didn't intend to
6 quantify or ask the jury to quantify.

7 Q. Did you tell the Court that the damages that
8 were being sought in response to that question were
9 in the pretrial order?

10 A. Yes, I did.

11 Q. Is the response to that question where your
12 damages are disclosed true? Is that where you
13 disclosed your damages in your pretrial order?

14 A. The damages that we were seeking, yes.

15 Q. Were disclosed where?

16 A. In the pretrial order.

17 Q. All right. So if we pick up at page 254, the
18 question at line 23, the answer is: I guess my
19 question is, where is it in there that talks about
20 this amount of money above the \$1,500 that you
21 initially disclosed?

22 Go ahead and read down and summarize -- go
23 ahead and read down and summarize your answer, if
24 you want to look at your next series of answers.

25 A. Sure. I've got it. Judge Boyle asked, quote:

1 I guess my question is, where is it in there that
2 talks about this amount of money above the \$1,500
3 that you initially disclosed?

4 Q. Let me stop you real quick.

5 A. Uh-huh.

6 Q. Were you seeking damages in this case -- when
7 you incorporate mental anguish damages, were you
8 seeking more than \$1,500? Were you hoping to get
9 more than \$1,500?

10 A. In mental anguish damages?

11 Q. Yes.

12 A. Yes, for Dr. White.

13 Q. Did you want to be limited to \$1,500 in mental
14 anguish damages?

15 A. No.

16 Q. Do you tell the Court somewhere in response to
17 her questions over the next page or two that it's
18 not quantified?

19 A. Yes. On page 255, line 3, I say: It's not
20 quantified.

21 Q. Did the Court, then, get a copy of the joint
22 pretrial order that you referred her to?

23 A. I do not know the answer to that.

24 Q. Well, does the Court then, later on, along with
25 Ms. Malone and yourself, read from the pretrial

1 order?

2 A. It was filed, yes.

3 Q. Well, I mean, I'm talking about in the next
4 couple of pages of questions, does someone read your
5 response to the pretrial order or some disclosure of
6 damages?

7 A. The Court asked: "What is your position on
8 that?

9 "Mr. Radbil: That the damages --

10 "The Court: You have a federal practice,
11 is that what you say?

12 "Mr. Radbil: I'm sorry?

13 "The Court: You have a federal practice,
14 and you don't know the answer to that question?

15 "Mr. Radbil: He's seeking damages --

16 "The Court: How about a straight answer?

17 "Mr. Radbil -- for mental anguish and
18 emotional distress.

19 "The Court: How about a straight answer?
20 You don't know the answer to that question?

21 "Mr. Radbil: That is a straight answer to
22 the question.

23 "The Court: That you have no obligation
24 to quantify your damages in federal practice when
25 asked in discovery and even by virtue of the

1 disclosure requirement. You're saying that you
2 don't know if that's a requirement. You don't know
3 that that's a requirement. That's what you have
4 said. Am I right?

5 "Mr. Radbil: That's a question for -- the
6 jury determines the actual amount of damages.

7 "The Court: Mr. Radbil" -- et cetera.

8 Q. Do you trail, then, into the mental anguish
9 damages?

10 Mr. Radbil, look at me for just a second.

11 A. Okay.

12 Q. Do you think that you need to disclose the
13 amount of your mental anguish damages?

14 A. No, I don't think they are quantifiable.

15 Q. Okay. It looks to me like there's some
16 miscommunication going on between you and the Court.
17 The Court is talking about 40,000 and 5,000. What
18 you are talking about?

19 A. The mental anguish damages that are separate
20 from the amount that Texas Guaranteed added to his
21 loans, who is not a party to his lawsuit, and that
22 we could not have recovered from the defendant in
23 this lawsuit.

24 Q. When you asked the Court about disclosing the
25 specific amount of damages, what are you talking

1 about? Economic damages, mental anguish damages?

2 A. Mental anguish damages.

3 Q. Mr. Radbil, the Court -- if you read the
4 transcript, it appears to me that the Court is
5 asking about economic damages or the 40 and five.

6 How do you get from that over to mental anguish
7 damages? What happened?

8 A. The only damage we were seeking were mental
9 anguish. So which line are you on?

10 Q. I'm just asking you, in general, how is it that
11 you get to mental anguish damages?

12 A. Because shortly before the mediated settlement
13 conference, Dr. White provided two memorandums. And
14 he couldn't find the documents that would even
15 support the Texas Guaranteed addition of money to
16 the student loans, and I had asked for it. As soon
17 as he sent it, I said, please provide all
18 information immediately. Even though we are late,
19 discovery is closed, the client says, I've got this,
20 this, and this, so send the information. But he
21 couldn't find it.

22 But he said, for my mental anguish damages, and
23 then he said a figure after giving it careful
24 thought, as I recommended, and then we went to the
25 mediated settlement conference and unfortunately we

1 didn't settle.

2 Q. Mr. Radbil, did you want Dr. White to be sealed
3 off at \$1,500 in mental anguish damages?

4 A. No, absolutely not.

5 Q. Were you, in answering these questions to the
6 Court, as frustrating as this may have been, were
7 you trying to be disrespectful or dishonest to the
8 Court, or were you trying to multiply the
9 proceedings that was going on in this case in any
10 way?

11 A. First, I apologize, Judge Boyle, to you,
12 because I respect you. I understand the career path
13 you have taken, and I respect that very much. I
14 know you are very smart. And I'm not attempting or
15 trying to be arrogant. And I know sometimes I may
16 explain the clock or try to explain it when you ask
17 what time it is, but that's just part of who I am, I
18 guess. I was just trying to help my client.

19 And I truly believed, based on case law that I
20 had looked at, that when you are seeking mental
21 anguish damages, that you don't have to quantify.
22 Keeping in mind that at the last minute is when I
23 find out about this \$40,000 allegedly added by Texas
24 Guaranteed. And then I took action and asked the
25 client to substantiate that with documents, which he

1 couldn't do.

2 And we're ready at the point where, even if we
3 did try to add a party, the party probably wouldn't
4 be added at that point. And if they were added,
5 there would be all sorts of complications. It
6 wasn't advisable, because he lacked information,
7 proof, and we had one defendant, and we were so
8 close to trial.

9 THE COURT: Mr. Radbil, do you see what a
10 mess this caused, even if I believe exactly what you
11 are saying today as to your motives? Do you see
12 what your behavior, your conduct, your inexperience
13 and the arrogance about it has caused? Four
14 hearings now, thousands of dollars worth of
15 attorney's fees, and you still don't seem to be
16 accepting responsibility for the fact that you were
17 way in on over your head and sort of making it up as
18 you go. That's part of the problem here.

19 MR. RADBIL: I wasn't making it up as I
20 went.

21 THE COURT: You were way in over your head
22 in that case, way in over your head.

23 MR. RADBIL: I'm really -- I respect your
24 -- I respected your decision with the witnesses, the
25 five witnesses. I let a lot of things go during the

1 pretrial, as I wanted this case to be tried
2 efficiently. When the witness issue with the
3 experts was debated, Your Honor said the parties
4 handled it in good faith. I made concessions so we
5 could move along. After the first day, I think Your
6 Honor said we have done pretty well.

7 THE COURT: Mr. Radbil, you had basic
8 issues with evidentiary exhibits that you didn't
9 know how to get in with the proper foundation. I
10 don't want to get off on a trail here. Let's go
11 ahead and move to your next point. I've got his
12 position.

13 Q. (By Mr. Suazo) Okay. Mr. Radbil, you were
14 here at trial by yourself, right?

15 A. I was, yes.

16 Q. You didn't have another attorney or anyone else
17 here with you at trial, right?

18 A. I was alone.

19 Q. Did you do the best that you could for your
20 client. Was that your goal?

21 A. Yes, absolutely.

22 Q. Okay. Mr. Radbil, there was some question
23 about mental anguish damages and the question that
24 you asked Dr. White pertaining to whether he had
25 sought or received counseling. Do you remember the

1 discussion that we asked about, that question that
2 you asked?

3 A. I remember that perfectly, yes.

4 Q. All right. Let's go to that actual question.
5 It's at Volume 2, page 187. This is at Tab 13.

6 A. Okay.

7 Q. All right. If you look at pages -- or at
8 lines, let's see, 3 through 7, do you see where
9 Dr. White is talking about anxiety?

10 A. Yes. The Court had just read a question back
11 when I struggled with it a little bit. I was trying
12 to give the jury a sense of the impact that these
13 events had had on his life compared to some other
14 traumatic event. And the Court read back the
15 question, and Dr. White's answer was: I don't think
16 I can. I've always had pretty good coping skills,
17 so I didn't have this kind of anxiety before. It
18 never happened. I have nothing to compare it to. I
19 have always been able to stay in control.

20 Q. Mr. Radbil, just trying to keep kind of some
21 flow going, you do see him in those lines talking
22 about anxiety. Right?

23 A. I do.

24 Q. And then the question that you asked him, then,
25 at page 187, lines 8 through 9: And have you sought

1 any counseling or treatment as a result?

2 And that's when the Rule 37 objection takes
3 place, and you get -- looks like there's a
4 conference at the bench. Do you see that?

5 A. I do.

6 Q. And Ms. Malone then goes on and says: His
7 answer to that question asking for future -- I asked
8 him a specific question regarding treatment for this
9 matter and if he was going through any treatment or
10 if there was any further, in Interrogatory 33,
11 asking for current or future psychiatric care, and
12 his answer was, No. No.

13 A. I said: I don't know the answer.

14 Q. Well, let me ask you: Do you think that there
15 was some disclosure of Dr. White having anxiety,
16 seeking treatment for anxiety?

17 A. I knew there was, because in the pretrial I
18 noted to the Court that his testimony, even though
19 the five witnesses would not be here, would not or
20 should not deviate from the testimony at his
21 deposition regarding things of this nature. And I
22 believe that the exact question was asked during his
23 deposition.

24 Q. Mr. Radbil, at Dr. White's deposition, which is
25 attached to your response to RAB's motion for

1 sanctions, it's marked -- it's Tab 14 of your book.

2 A. Okay.

3 Q. At page 173 -- at the bottom you see App. 173,
4 it's page 135 of the deposition.

5 A. I do.

6 Q. The question is asked: Your rheumatologist is
7 treating you for what. What is your rheumatologist
8 treating you for?

9 And Dr. White's answer was -- I don't know how
10 to pronounce that: Ankylosing spondylitis, symptoms
11 of anxiety --

12 THE COURT: Maybe you should spell it.

13 MR. SUAZO: A-N-K-Y-L-O-S-I-N-G, and then
14 a new word, S-P-O-N-D-Y-L-I-T-I-S .

15 Q. (By Mr. Suazo) -- and symptoms of anxiety, and
16 that's it.

17 And then the next question at line 22 is: So
18 you have sought -- have you sought medical treatment
19 for your anxiety?

20 A. Which page? I'm sorry.

21 Q. It's still the same exact page, the last page
22 of Tab 14 in your book, which is App. 173.

23 A. Okay.

24 Q. Your response to the motion for sanctions, and
25 the question is: So you have sought -- have you

1 sought medical treatment for your anxiety?

2 And the answer is: Yes.

3 Is that correct?

4 A. That is correct. And if you'd flip back also
5 to page 88, Ms. Malone asked:

6 "A lot of churches have what they call pastoral
7 counseling, and I know you're familiar that those
8 folks have some training in counseling background.
9 Do you do pastoral counseling?

10 "No.

11 "Are you a pastoral counseling volunteer at
12 your church?

13 "No."

14 THE COURT: Slow down.

15 A. "Okay. Does your church offer that?

16 "I -- I don't attend church.

17 "Okay. Not all folks do. I just -- just
18 wanted to know if it was available to you. That's
19 all. Okay. At your school, at Texas A&M Commerce,
20 a lot of psychology --

21 THE COURT: You really need to read slower
22 than that. Okay?

23 A. "Okay. At your school at Texas A&M University
24 Commerce, a lot of psychology programs have student
25 counseling for helping graduate students go through

1 what appears to be basically a very stressful time
2 in their life. Did you partake in that?"

3 "I set up an appointment. My symptoms got
4 better. I decided not to go. I -- I didn't really
5 have time to do it anyway. Then they got worse
6 later.

7 "Question: Okay. So did you -- you set up an
8 appointment to deal with your panic attacks
9 specifically?

10 "Answer: Yes.

11 "Question: Not the stress of being a graduate
12 student?

13 "Answer: Right.

14 "Okay. That's fine. I just want to make sure
15 I understand why. And you were a no-show -- or
16 canceled the appointment?

17 "Answer: I called and canceled."

18 Q. Let me just stop you there.

19 Mr. Radbil, this is at App. 126 and App. 127 of
20 the response to the motion for sanctions.

21 And let me just ask you this, because there
22 were some -- the previous page Dr. White testified
23 in his deposition that he had gotten treatment for
24 anxiety from his rheumatologist.

25 Was Dr. Cush the rheumatologist?

1 A. He was, yes.

2 Q. Was Dr. Cush disclosed in advance of trial,
3 well in advance of trial?

4 A. In the initial disclosures -- I'm sorry. In
5 the first response to the interrogatories, The
6 Arthritis Care and Research Center --

7 Q. Is that a yes?

8 A. Yes.

9 Q. Take a look, if you would, at Tab 15 in your
10 book. And this is RAB Sanctions, Exhibit Number 4.
11 Let's go to the last page.

12 This is a document signed by Mr. Kurz, and this
13 is the Plaintiff's Supplemented Response to
14 Defendant's First Set of Interrogatories. Do you
15 see that?

16 A. Uh-huh, I do.

17 Q. And it looks like right above Mr. Kurz's
18 signature is a Certificate of Service. It's dated
19 March 9th, 2012, right?

20 A. Correct.

21 Q. That's 11 months before trial, correct?

22 A. Yes.

23 Q. Is Dr. Cush's name on there as someone that he
24 had sought treatment from?

25 A. It is.

1 Q. Mr. Radbil, why didn't you articulate this
2 disclosure to Judge Boyle when the questions were
3 asked about disclosure of counseling or anxiety
4 treatment? Why didn't you articulate this
5 disclosure?

6 A. Part of it was being confused by
7 Interrogatory Number 33, which doesn't exist. And
8 part of it was because the deposition testimony had
9 been so clear that, you know, I didn't think there
10 was any doubt.

11 Q. Mr. Radbil, let me -- did you do your best when
12 you were asked these questions?

13 A. Yes.

14 Q. And put forth the best disclosure you possibly
15 could?

16 THE COURT: But at the sidebar, when
17 Ms. Malone articulated precisely what her objection
18 was, that she had asked Dr. White a specific
19 question regarding treatment for the matter and if
20 he was going through any treatment and asking for
21 current or future psychiatric care, his answer was
22 no, no.

23 Mr. Radbil then said to me and to
24 Ms. Malone, I don't know the answer.

25 Basically, I don't know what he's going to

1 say to this. That conflicts with what he is talking
2 about now.

3 MR. SUAZO: Right, Your Honor. And what I
4 am trying to establish is that there is a
5 disclosure; that Mr. Radbil didn't articulate the
6 best disclosure possible to the Court. I don't
7 think he did that in bad faith or on purpose. I
8 think that that's just -- perhaps he should have
9 done a better job of articulating that disclosure.
10 That doesn't, in my view, rise to the level of bad
11 faith.

12 THE COURT: I understand your point,
13 Mr. Suazo, and I think you are doing a very good job
14 of articulating your position on this. But it's
15 just -- it's in a series, a great series of
16 circumstances that otherwise it would be easy to
17 look at it the way you are describing, but it makes
18 it more difficult as the circumstances expand in
19 this case to look at it that way, because it's one
20 of many. And Ms. Malone wants to say something, and
21 then we're going to talk about when we are going to
22 meet again.

23 MS. MALONE: Your Honor, the only thing I
24 would like to do is just, under the Rule of Optional
25 Completeness, there is another additional testimony

1 that appears in document 128, which is their
2 response, at Appendix 141. Again, this is from
3 Dr. White's testimony relating to Dr. Cush.

4 THE COURT: Document 128, as filed in the
5 Court docket?

6 MS. MALONE: Yes, Your Honor. It is the
7 exhibit that is Dr. White's testimony.

8 At line 4, we're talking about -- he's
9 saying that he's trying to tell the Court that he
10 disclosed that he saw Dr. Cush for this anxiety
11 related to the complaints about the suit.

12 And at line 4 on page 103 of Dr. White's
13 deposition, I asked:

14 "Question: And obviously that's -- so you
15 want your rheumatologist to be the primary person
16 you're speaking to; is that fair?"

17 "Answer: Yes.

18 "Question: Have you talked with your
19 doctor at all about any of this related to the debts
20 or the telephone calls?

21 "Answer: No."

22 So he didn't get counseling for anxiety
23 related to the telephone calls or anything about
24 that. We were never told that. In fact, that's
25 contrary to his deposition testimony, which is that

1 he may have been seeing Dr. Cush for his very
2 serious health condition, and there's certainly
3 anxiety related to that. He never sought treatment
4 for these telephone calls by Dr. White's own
5 testimony.

6 THE COURT: What we're going to do --
7 Mr. Suazo, I understand you have a different
8 position. I will let you finish up, but then I want
9 to talk about, unfortunately, when we are going to
10 have to finish this up.

11 Go ahead. Did you have anything else?

12 MR. SUAZO: I was just going to say, just
13 briefly in response to that, once again, I think
14 that's fair game for impeachment, because there's
15 different things that are being said in the
16 deposition.

17 It's the same thing, to some extent, about
18 what's going on with the corporate representative
19 where he gave two depositions. The first
20 deposition, the man didn't know anything about the
21 policies; a motion to compel had to be filed. He
22 then came back, and he then studied up for the quiz,
23 I guess, and was able to answer some questions.

24 It's an impeachable point to be able to
25 use that first deposition and say, look, I asked you

1 about all this stuff on June the 4th, and you didn't
2 know anything about it. We had to reassemble on
3 July 28th, and then all of a sudden you knew
4 something about this.

5 THE COURT: But then, in context, that's
6 the precise area that yet another one of these
7 strange occurrences occurred with Mr. Radbil, where
8 he's vehemently arguing to the Court why he should
9 get to re-call or call this corporate
10 representative -- re-call, I believe it was, to the
11 witness stand, because he never got enough in his
12 deposition, and he starts citing to the problems
13 with the deposition. And finally, Ms. Malone
14 clarifies that they did get another deposition.

15 And I said: So you're quoting from the
16 first deposition to support your argument now that
17 you can call him back without telling me. It's that
18 kind of a thing.

19 This really is just one detail after
20 another, where everything has to be explained. No
21 defense lawyer should ever have to do this to
22 represent their client, have this much that they
23 have to -- every single fact has a nuanced answer.

24 I appreciate the fact that you all are
25 here, I really do. And I know that you were hoping

1 to be done not only today, but much earlier.

2 Mr. Radbil, you can step down. I think
3 what we need to do is, we're going to have to be
4 back here, all of us. I'm going to just have all of
5 you confer. I will make the day available. We can
6 do it Thanksgiving Day. I'm sure everybody is
7 available that day. I'm not being serious, but we
8 are going to do it, and I want to do it before the
9 end of November if there's any way possible.

10 So talk to each other, and let's see what
11 we have to do. And Ms. Malone and Mr. Martin, I
12 hate that you are having to spend your work time
13 over here on this sanctions motion. One more day.
14 This will be the fifth time we've set it.

15 Any thoughts on scheduling, Mr. Jefferson?

16 MR. JEFFERSON: Thank you for asking,
17 Judge. We will certainly circle up and, you know,
18 we need to do what we need to do to represent our
19 client, but I believe that clearly next time will be
20 it.

21 And I was just looking at the clock. I'm
22 hoping that my secretary is still there in the
23 unlikely event that, you know, she's expecting
24 overtime or anything else like that. I mean, we can
25 certainly get an answer --

1 THE COURT: I don't need anything tonight.

2 MR. JEFFERSON: Okay. But we will
3 endeavor -- I know there is one week where I'm out,
4 but I think we can endeavor and make this a priority
5 to get this finished in the month of November.

6 THE COURT: Now, before you leave, let's
7 just make sure that all of the exhibits are here.
8 I'm not worried about looking through and making
9 sure the redactions have been done or whatnot that
10 we have talked about. Just make sure that each of
11 the three plaintiff notebooks and the two, the one
12 Radbil with the additions and the one for defendants
13 with the additions, are here with the supplements in
14 them. All right?

15 All right, ladies and gentlemen, we will
16 see you next time.

17 (Court in recess at 6:14 p.m.)
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C E R T I F I C A T E

I, Shawnie Archuleta, CCR/CRR, certify
that the foregoing is a transcript from the record
of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees
format comply with those prescribed by the Court and
the Judicial Conference of the United States.

This 20th day of November 2013.

s/Shawnie Archuleta
Shawnie Archuleta CCR No. 7533
Official Court Reporter
The Northern District of Texas
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My CSR license expires: December 31, 2013

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